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Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

IN THE MATTER OF: :
Phase II Distribution :Docket No.
of the 2004-2009 :2012-6
Cable Royalty Funds :CRB CD
:2004-09
:(Phase II)

IN THE MATTER OF: :
Phase II Distribution :Docket No.
of the 1999-2009 :2012-7
Satellite Royalty Funds :CRB SD
:1999-2009
:(Phase II)

Volume 6

Tuesday,
December 16, 2014
Room LM-403
Madison Building
Library of Congress
101 Independence Avenue, SE
Washington, DC
The above-entitled matter came on for
hearing, pursuant to notice, at 9:34 a.m.

BEFORE: THE HONORABLE SUZANNE M. BARNETT
THE HONORABLE JESSE FEDER
THE HONORABLE DAVID R. STRICKLER
Copyright Royalty Judges

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1 P-R-O-C-E-E-D-I-N-G-S
2 (9:34 a.m.)
3 JUDGE BARRETT: Good morning.
4 GROUP RESPONSE: Good morning.
5 JUDGE BARRETT: Please be seated.
6 (Pause.)
7 JUDGE BARRETT: We have only one order
8 of business today and that is to hear closing
9 argument from each of the participants.
10 I think we agreed yesterday that MPAA
11 was allotted 55 minutes, SDC 57 minutes and IPG
12 50 minutes.
13 Let me reassure you that you need not
14 take all of that time if you don't need it. So,
15 order of closing then.
16 MR. OLANIRAN: Thank you, Your Honor.
17 I was volun-drafted to lead off.
18 JUDGE BARRETT: Okay. Did you say
19 volun-drafted?
20 MR. OLANIRAN: Yes.
21 (Laughter.)
22 MR. OLANIRAN: Good morning, Your

5

1 Honor. Greg Olaniran for Motion Picture
2 Association, for the record.

3 I wanted to start by thanking the
4 judges for the patience for what has been a very
5 trying week or so, and most importantly for
6 having the flexibility to allow us -- to allow
7 MPAA the opportunity to present its case even
8 though we had gone over a little bit of our time.

9 My presentation is going to be divided
10 into two parts, principally, as I did with my
11 opening.

12 I will address what we've established
13 between our written objections and our
14 presentation in this case with respect to MPAA's
15 objections to IPG's claims. And secondly, we'll
16 address IPG's objections to MPAA's claims.

17 'And then I will address what more than
18 anything this proceeding has revealed, which is
19 what we consider, and I think SDC shares that
20 concern also about IPG's conduct not simply in
21 this proceeding, but in other proceedings as well
22 and/or some type of action by the judges.

6

1 As a threshold issue, you have ruled
2 in the past in previous cases that parties'
3 claims are presumptively valid and only
4 rebuttable by sufficient evidence.

5 We believe we have established with
6 sufficient evidence that IPG's claims are not
7 entitled to a presumptive validity in this case.

8 First, I'd like to remind the judges
9 that the Tracee Productions as included in the
10 1999 claim still remains in this proceeding.

11 While MPAA has no -- MPAA and IPG have
12 no contention in 1999, but 1999 still remains
13 part of this, the consolidated proceeding. And
14 to that extent, the inclusion of a fictitious
15 entity in the 1999 claim is something that we
16 think goes towards the elimination of the
17 presumption of validity of IPG's claims.

18 JUDGE STRICKLER: Can I ask you a
19 question, Counselor?

20 MR. OLANIRAN: Yes, Your Honor.

21 JUDGE STRICKLER: The 1999 claim for
22 Tracee Productions appears in the Satellite

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1 portion of this proceeding, correct?

2 MR. OLANIRAN: Correct.

3 JUDGE STRICKLER: Is it your position
4 that it also infects, for lack of a better word
5 at the moment, the Cable aspect of this that does
6 not apply to 1999?

7 MR. OLANIRAN: I'm not sure I
8 understand that question.

9 JUDGE STRICKLER: The Tracee
10 Productions' claim --

11 MR. OLANIRAN: Yes.

12 JUDGE STRICKLER: -- in 1999 is a
13 claim in the Satellite Fund.

14 MR. OLANIRAN: That's correct.

15 JUDGE STRICKLER: There is no claim for
16 1999 in the Cable Royalty Fund in this
17 proceeding. It is 2004 through 2009, correct?

18 MR. OLANIRAN: That's correct, yes.

19 JUDGE STRICKLER: So, is it your
20 position that the presence of the Tracee
21 Productions claim in the Satellite portion of
22 this proceeding also should be something that we

8

1 consider when we consider IPG's presentation as
2 it relates to the Cable aspect?

3 MR. OLANIRAN: Absolutely, Your Honor,
4 because it is part of a pattern of conduct.

5 JUDGE STRICKLER: So, it's not because
6 the proceedings have been consolidated, but it's
7 a pattern of conduct irrespective of whether
8 there was consolidation? Is that your position?

9 MR. OLANIRAN: That's our position,
10 right -- well, because it is consolidated it
11 helps to have the proceedings being held at
12 different times.

13 If the Satellite case came first and
14 we had a subsequent -- a Cable case, we would be
15 making an argument because IPG's conduct -- IPG's
16 misconduct is something that traverses several
17 years.

18 JUDGE STRICKLER: Thank you.

19 MR. OLANIRAN: Now, the second issue is
20 that of personal knowledge of IPG's witnesses and
21 who are attesting to the veracity of IPG's claims
22 during the period when they were not involved at

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1 least according to their testimony, they were not
2 involved with IPG's operations.

3 And to start with, Ms. Vernon did not
4 join IPG until March of 2005. By her own
5 testimony, prior to that time she had no
6 involvement whatsoever with IPG.

7 And by her own testimony, everything
8 she learned about what happened to what I call
9 IPG operating pre-2005, she learned from Mr.
10 Galaz.

11 Now, by Mr. Galaz' own testimony
12 assuming that he was truthful to the federal
13 authorities when he wrote to the federal
14 authorities, he was not involved in the business
15 of TV royalty collection between June '02 and
16 November of '05.

17 So, if everything Ms. Vernon learned
18 about pre-'05 IPG came from Mr. Galaz, that means
19 that neither Mr. Galaz nor Ms. Vernon have
20 personal knowledge of IPG's operation during the
21 period from '02 through '05.

22 And this is very important, because

10

1 IPG filed claims in '02, '03, '04 and '05 for the
2 claimed year -- for the Royalty years '01, '02,
3 '03 and '04.

4 So, both also testified as to
5 documents that were taken by Ms. Oshita and lost
6 claimant records. Both Mr. Galaz and Ms. Vernon
7 did.

8 However, IPG somehow wishes to use
9 this problem only to justify the inability to
10 substantiate their claims, but we know that
11 terminations actually occurred during that
12 period.

13 For example, A&E fired IPG twice in
14 2003. And A&E's termination is actually a little
15 bit troubling, because A&E actually had to issue
16 a third termination in 2011 before hopefully IPG
17 got the message.

18 Golden Films fired IPG in 2004. LATV
19 Networks, which was subsequently replaced by
20 Urban Latino, fired IPG in 2003. Worldwide Pants
21 fired IPG in 2002. IPG provided no information
22 about these terminations in discovery whatsoever.

11

1 So, either IPG's witnesses did not
2 know about the terminations, which lack of
3 knowledge actually underscores the incompetence
4 to testify about the veracity of IPG's claims
5 that were filed in the '02 through '05 period, or
6 worse, though, maybe they did know about a
7 termination, but failed to provide the
8 information to MPAA in discovery.

9 Third point, other entities also
10 provided affidavits demonstrating clearly that
11 IPG does not represent them in this proceeding
12 whether because IPG had made misrepresentations
13 to them, or because they signed the so-called
14 acknowledgments in plain error.

15 Now, Fintage is one example. Pacific
16 Family is another example. Mr. Devillier for
17 Devillier Donegan Enterprises, is another example
18 of claimants that terminated IPG and they wound
19 up somehow or another beholden to IPG.

20 Now, fourth, strangely enough IPG did
21 provide some termination letters, but insists
22 that it has authority to represent those

12

1 terminating claimants.

2 Examples of those claimants are Beacon
3 Communications, Big Feats Entertainment, Showtime
4 Networks and U.S. Olympic Committee.

5 Now, I'll discuss later IPG's
6 questionable legal basis for continuing to
7 represent claimants that have already terminated
8 IPG, but what's most important ultimately is that
9 IPG pursued claim through all of the Royalty
10 years at issue in this proceeding on behalf of
11 entities that had terminated IPG.

12 And the bottom line is that IPG's
13 claims are riddled with the claims of entities
14 that have revoked representation authority.

15 You can't not trust Mr. Galaz' or Ms.
16 Vernon's testimony alone regarding the veracity
17 of IPG's claims. And I will talk about their
18 credibility later.

19 You also cannot ignore the threats of
20 legal action forcing some entities to feel
21 beholden to IPG, and nor can you ignore the
22 record about the more recent cases of troubling

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1 IPG conduct.

2 And I refer to the Feed the Children
3 Case, which I will talk about a little bit more,
4 and the Bob Ross case both on behalf of whom IPG
5 recently filed claims despite crystal clear
6 rejection of IPG's representation authority.

7 So, for these reasons, we believe
8 IPG's claims are not entitled to presumptive
9 validity. And for every single claim that IPG is
10 making in this case, IPG must establish that it
11 has -- it has entitlement to that claim.

12 Now, with regard to the substance of
13 our written objections, we believe that IPG is
14 really trying to stretch the limits of its
15 representation authority.

16 The statute requires that a person
17 signing a joint claim must be a duly authorized
18 agent of each claimant on that joint claim.

19 Your regulations require that a joint
20 claim must include a declaration of authority to
21 file the claim and of the veracity of the
22 information contained in the claim, and the good

15

1 claimant entities are entitled to receive
2 royalties in this proceeding; and, three, that
3 its claimants are entitled to royalties for
4 certain works.

5 Where IPG has failed to meet these
6 burdens, its claimants and all the works for
7 which it seeks compensation must be dismissed
8 from IPG's case.

9 Now, within the context of this
10 principal glib that I just outlined, we
11 established with the record both the written
12 objections and examination in this case, six
13 groups of claimants that should be dismissed from
14 IPG's claims.

15 Now, we have identified these
16 claimants in our brief accordingly. The only
17 claimant we don't identify is Direct Cinema.

18 And we -- IPG, as Your Honor allowed
19 us to ask some questions about these additional
20 representation agreements that IPG produced well
21 after the deadline.

22 And for Direct Cinema, IPG only

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1 faith of the person signing and providing such
2 information.

3 You have interpreted that law to mean
4 that for a joint claim to be valid, an agreement
5 must exist between the joint claimant and each
6 individual claimant on that joint claim as of the
7 date the joint claim is filed.

8 Also, before a party can file a
9 petition to participate in this proceeding,
10 regulations require the authority and consent of
11 the claimants listed on the petition to
12 participate.

13 Finally, you ruled in the 0003
14 decision that for distribution purposes where a
15 claimant has stated clearly that it no longer
16 wishes a particular entity to represent its
17 interests in a proceeding, you will honor that
18 request.

19 IPG has failed to meet its burdens of
20 production, proof and participation. One, that
21 it has authority to represent certain claimants
22 in this proceeding; two, that numerous IPG

16

1 produced an extension agreement, not the original
2 agreement.

3 So, going back to the six groups that
4 we outlined in our brief, you'll note that some
5 of the claimants actually fall in more than one
6 group.

7 The first group of claimants that we
8 seek dismissal for which we believe we have
9 established a record for, are those IPG claimants
10 who were dismissed in the 2000 through 2003 case
11 or awarded to MPAA because -- and we seek
12 dismissal of those because IPG has provided no
13 additional evidence compelling a different ruling
14 from what was made in the 2000-2003
15 determination.

16 And those determinations occurred both
17 in the March 21st, 2013 order, and in the final
18 determination.

19 The second group of claimants for
20 which we believe we have made a record for their
21 dismissal, are those claimants that have
22 terminated IPG or somehow disavowed IPG as their

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1 authorized representative.

2 Now, as I mentioned earlier, the
3 judges have made clear that once the entities
4 have clearly expressed their desire to not be
5 represented by IPG, that you would honor that
6 request.

7 Now, IPG apparently disagrees with
8 this. IPG apparently disagrees with this idea
9 and they have now concocted this idea of post-
10 termination rights.

11 And it appears that this is how IPG
12 wishes to defend claimants that have terminated
13 IPG.

14 And IPG's position appears to be that
15 they have a right to continue to represent a
16 claimant even after the claimant has made its
17 desires clear to them.

18 In fact, as you see in the case of
19 Feed the Children, IPG appears to now extend that
20 principal a little bit.

21 Not only do they -- is IPG arguing
22 that it has post-termination rights, apparently

19

1 rejection continue to insist on being the
2 representative of any claimant.

3 Now, the third group of claimants are
4 those claimants for whom IPG failed to produce
5 any document of its engagement by the claimant at
6 the time IPG filed claims on the claimant's
7 behalf.

8 Now, for this group of claimants, IPG
9 did not produce executed representation
10 agreements or any other credible evidence of
11 representation.

12 Now, in some cases IPG produced only
13 a hodgepodge of documents from which it was
14 practically impossible to infer the existence of
15 a relationship between IPG and the claimant as of
16 the date the claim was filed.

17 Now, IPG appears to rely -- for those
18 claimants, IPG appears to rely solely on the
19 testimony of Mr. Galaz, which, as I discussed
20 later, his testimony is completely unreliable.

21 Now, the fourth group of claimants are
22 those claimants for whom IPG produced only recent

18

1 IPG believes that that post-termination right
2 extends to actually filing claims after it's been
3 terminated by a claimant. This convenient
4 concoction flies in the face of the law.

5 It is disingenuous for IPG to assert
6 that it's duly authorized as required by the
7 statute, is duly authorized to represent a
8 claimant when that claimant has terminated IPG.
9 Plain as that. It makes no sense.

10 Secondly, it's equally disingenuous to
11 say -- for IPG to claim to have authority and
12 consent of a claimant that has made it clear that
13 we don't want you working for us anymore.

14 I don't know how else to argue this
15 other than to say you don't have authority and
16 consent to represent someone that says, please
17 don't work for me anymore. It really is that
18 simple.

19 So, allowing IPG to prevail in the
20 other instance renders both the statutory
21 requirement and the regulatory requirement
22 meaningless if IPG can't in the face of this

20

1 email correspondence and confirmations to
2 establish IPG's representation of authority.

3 Now, you found in the last proceeding
4 that email correspondence alone won't get the job
5 done, because some elements of the contract
6 clearly would be missing from the email.

7 But more importantly, these
8 confirmations, these are the confirmations that
9 IPG mass emailed to a whole bunch of recipients
10 saying, please confirm that we represent you.
11 Now, where those confirmations are
12 executed, they are exactly the form of
13 retroactive ratification that you rejected in the
14 0003 proceeding.

15 Simply sending an email to someone
16 that says, oh, well, this -- that doesn't tell
17 you whether as of the date that IPG filed a claim
18 for that claimant, that IPG had authority to do
19 so.

20 And some of the claimants have an
21 incentive to just sign and return the form. They
22 have nothing to lose.

21

1 JUDGE STRICKLER: Counsel, is there any
2 kind of inconsistency between that argument that
3 you just made and the argument that when a
4 claimant sends a termination letter and says,
5 please don't work for me anymore, we should
6 respect what the claimant says if the claimant
7 doesn't want IPG representing it anymore.
8 Whereas if a claimant sends a ratification --
9 signs a ratification letter even if it was mass
10 produced by whoever did the writing, the claimant
11 is saying, yes, you represented us before, we
12 want you to continue to represent us.

13 Why wouldn't we give equal respect to
14 what the claimant wants in that ratification
15 letter as we do in the termination letter?

16 MR. OLANIRAN: Because, Your Honor, the
17 statute requires that in order to file the claim,
18 you have to be a duly authorized agent. And IPG
19 has to establish that as of when IPG filed that
20 claim, that it had -- it was the duly authorized
21 agent.

22 Now, with respect to termination, the

22

1 claimant can terminate at any time. There are
2 other ways to remedy -- to remedy the termination
3 for IPG.

4 They can pursue it privately and have
5 a private action or however they choose to deal
6 with that, but it is a statutory requirement that
7 IPG has to establish that it represented the
8 claimant.

9 So, when you produce just the
10 confirmation, there's in addition to the
11 financial motive behind the confirmation where if
12 you're just sitting there, you haven't done
13 anything and somebody says, oh, if you sign this,
14 I can get you lots of money, which actually the
15 language of the confirmation says in one instance
16 and it's in the record where IPG promised tens of
17 thousands of dollars. The claimants have no
18 motive.

19 So, it's not inconsistent because we
20 are talking about a statutory requirement versus
21 an option for the claimant to terminate whenever
22 they wish.

23

1 JUDGE STRICKLER: Well, there's always
2 an economic motive behind it. That's the whole
3 purpose of these proceedings is to get money.

4 MR. OLANIRAN: Correct.

5 JUDGE STRICKLER: So, the economic
6 motive is not particularly persuasive one way or
7 the other.

8 Aren't we really talking about
9 evidence rather than the regulatory requirement?

10 IPG had to be representing the
11 claimant in July of the given claim year when the
12 claim was filed.

13 And the ratification, claimed
14 ratification letter or confirmation is supposedly
15 evidence of the fact that the representation
16 relationship existed back then.

17 So, aren't we really talking about a
18 question of evidence and testimony and
19 credibility, not a question of what the
20 regulation says?

21 Because this evidence, as I understand
22 it from IPG, is trying to say that relationship

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1 did exist back in the July filing period for the
2 previous claim year. Here's our evidence of it.

3 And your position, if I understand it
4 correctly, is the evidence is not sufficient to
5 prove that.

6 If it was otherwise credible, if we
7 found the witnesses credible and the documents to
8 be believable, then that would be evidence of the
9 fact that the relationship truly existed at the
10 time in July when it needed to be in existence.

11 MR. OLANIRAN: In that regard, Your
12 Honor is correct. It is a question of whether
13 there is evidence to support that a relationship
14 existed as of when IPG filed the claim.

15 But I still go back to the point that
16 that piece of paper alone even when executed,
17 does not lead to an inference or to a conclusion
18 that a relationship existed years ago when IPG
19 filed that claim.

20 JUDGE STRICKLER: If a piece of paper
21 said the relationship existed back then, we just
22 don't have the contract, but IPG was our

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1 representative back in July of 2000 when it filed
2 its claims for the 1999 claims year, would you
3 say that that would then constitute proof -- some
4 proof of the existence of the relationship back
5 at that time?

6 MR. OLANIRAN: Well, based on the
7 decision in the last proceeding, that's the
8 retroactive ratification that I was talking
9 about.

10 JUDGE STRICKLER: Well, aren't all
11 ratifications retroactive?

12 MR. OLANIRAN: Good point.

13 JUDGE STRICKLER: So, your position is
14 you can't ratify.

15 MR. OLANIRAN: You can't --

16 JUDGE STRICKLER: You lose the paper,
17 you lose the case.

18 MR. OLANIRAN: Yes. Yes. Because I
19 know that in our case, there were instances where
20 some of our claimants didn't have a
21 representation agreement and they just didn't
22 become part of the case.

27

1 And the fact that some of this
2 confirmations went to claimants that had
3 terminated IPG and, as a matter of fact, some of
4 those confirmations were also revoked by
5 affidavit by some of the claimants.

6 JUDGE STRICKLER: So, your position is
7 you can't confirm no matter what. You lose the
8 paper, you lose -- even if we don't accept that
9 argument --

10 MR. OLANIRAN: Right.

11 JUDGE STRICKLER: -- the confirmation
12 process as IPG presented it is full of sufficient
13 holes and we shouldn't find the confirmations
14 themselves credible and effective.

15 MR. OLANIRAN: In addition to which for
16 those not responding recipients. Well, some may
17 not have responded -- according to Ms. Vernon's
18 testimony, maybe they didn't respond because they
19 didn't get the email, but we know that there are
20 some that received the email and simply did not
21 respond. A&E was one example of those people.

22 You cannot infer, and we argue this in

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1 If we don't have a way of establishing
2 representation as of the time that the claims
3 were filed, we just don't do it.

4 JUDGE STRICKLER: There's no cure. You
5 don't have the paper. You can't -- there's no
6 way to cure it. You're out of luck.

7 MR. OLANIRAN: Because it's a statutory
8 -- I go back to the statutory requirement.

9 JUDGE FEDER: Well, does the statute
10 specifically say what kind of evidence is
11 necessary?

12 MR. OLANIRAN: The statute does not
13 specify. And I go to the duly authorized
14 language of the statute, which certainly the
15 judges have the discretion to interpret.

16 And I'm going back -- we made our
17 presentation in the last proceeding and I think
18 the confirmation is an attempt to cure some of
19 the ills of IPG's presentation in the last
20 proceeding, but we also know that there's no
21 integrity in the confirmation process itself, a
22 lack of quality control.

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1 our brief, you can't infer a relationship simply
2 because a recipient did not respond to the
3 confirmation.

4 So, to the extent that IPG's only
5 evidence of authority is the confirmation, we
6 urge -- we think we have enough in the record to
7 establish that those claimants should be
8 dismissed.

9 Now, the fifth group of claimants that
10 we ask the judges to dismiss are those group of
11 claimants who failed to file claims for one or
12 more royalty.

13 Now, the most significant of this
14 group of claimants come from the 2008 Satellite
15 claim. And we obtained a certified copy of all
16 of the pertinent claims.

17 We believe that certified copies
18 should be the official copies of the claim. And
19 based on our review of the certified copies of
20 these claims, we identify claimants, and I think
21 it's Appendix C, of our written objections, and
22 those claimants did not appear on the official

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1 copy of the claims.

2 If they don't appear on the official
3 copy of the claims, we think based on the
4 Universal Studios decision a few years back that
5 those claimants cannot make any claims in this
6 proceeding.

7 Now, with respect to the last group,
8 the sixth group of claimants that we think should
9 be dismissed, we urge the judges to dismiss from
10 IPG's case, are those claimants who failed to
11 produce any evidence that -- or IPG failed to
12 produce any evidence that the purported claimants
13 verified the authority to -- IPG's authority to
14 collect the transmission of royalty for the
15 titles that were associated with those claims.

16 And we have a list of those claimants
17 again in Appendix D of our written objections.

18 For some of those claimants that are
19 listed in Appendix D, IPG produced no evidence
20 that the titles that IPG is claiming on behalf of
21 those copyright owners are actually owned or
22 controlled by the copyright owners in question.

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1 And then for other claimants on that
2 list, the only evidence that IPG produced linking
3 the claimant with the title is essentially a
4 bunch of pages of illegible IMDB searches.

5 And since IMDB, per se, is actually an
6 unreliable source of establishing ownership let
7 alone entitlement to royalties, which are two
8 different concepts, and the fact that this
9 evidence is illegible makes it even worse.

10 So, we ask for those claimants to be
11 dismissed because IPG has not been able to verify
12 whether those claimants are actually entitled to
13 the titles.

14 And, again, for most of those
15 claimants IPG relied almost exclusively on the
16 testimony of Mr. Galaz who we've maintained was
17 not credible before in the 0003 proceedings and
18 we believe has not been credible in this
19 preliminary hearing either.

20 Now, speaking of Mr. Galaz'
21 credibility, I think the judges have now
22 recognized multiple times that Mr. Galaz is not a

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1 credible witness.

2 The judges spoke to this in the '99
3 proceeding, spoke to this in the 0003 proceeding,
4 and of course we are all very familiar now with
5 the 1997 proceedings after which Mr. Galaz went
6 to jail.

7 As we presented earlier in this
8 proceeding, there were other inappropriate
9 conducts engaged in by Mr. Galaz that did not
10 rise to the level of criminal conduct.

11 There was the deal that Mr. Galaz made
12 with Tracee Productions essentially to append a
13 whole list of programs to Tracee Productions'
14 timely files claim and run that through MPAA to
15 be compensated.

16 Now, Mr. Galaz will argue, I'm sure
17 Mr. Boydston would argue that was just an
18 innocent mistake and they never really committed
19 misconduct.

20 The fact is Mr. Galaz graduated from
21 UCLA, went to Stanford Law School and I think
22 based on his testimony and based on his

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1 reputation, I doubt that it was just an innocent
2 mistake by Mr. Galaz particularly when it comes
3 to royalty collection.

4 Now, his responses, Your Honor,
5 frankly were very, very evasive in this
6 proceeding and made it very difficult to elicit
7 even the most simplest of -- the simplest of
8 answers.

9 And I'll be very honest with you.
10 There were times that if I had asked him his
11 name, he would have needed to check his driver's
12 license to give a response to that.

13 And I recall on several occasions
14 being directed by the judges to answer very
15 simple questions directly. That's how evasive he
16 was.

17 He also made reckless and unfounded
18 allegations about MPAA's claimants regarding
19 their lack of authority to represent claimants.

20 An example is Mr. Galaz' allegations
21 against Fintage with regard to representation of
22 Bell Phillips Television or Televisa or TV

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1 Azteca.

2 Mr. Galaz just made this allegation
3 without foundation whatsoever. He just said,
4 well, the relationship between Fintage and these
5 entities can't be legitimate, without saying
6 anything else.

7 Of course Fintage is one of IPG's
8 competitors. And they have a -- their past
9 history is well-documented, but they were just
10 reckless, unfounded allegations.

11 And Ms. Vernon was really not that
12 much better. She was involved in IPG's most
13 recent misconducts, fired by Feed the Children on
14 July 1st, filed a claim without authority on July
15 31st.

16 When I questioned her about what she
17 goes through to file a claim, she assured me that
18 she goes through the bona fides -- of each claim,
19 the bona fides of IPG's representation before
20 putting her signature on the claim.

21 Well, I'm not sure how she can explain
22 how signing a claim on July 1st after she was

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1 specifically instructed by the entity, don't work
2 for me anymore.

3 Ms. Vernon was also responsible for
4 sending out confirmations on those entities.

5 And as I've discussed a few minutes
6 ago, they recklessly pursued several entities
7 that had terminated IPG. She was responsible for
8 that. She's a 99 percent interest holder in IPG.
9 She must be held accountable also.

10 Now, most egregiously is the Bob Ross
11 -- inclusion of Bob Ross on the 2014 claims.

12 We all know that Bob Ross fired --
13 well, Bob Ross made it very clear even if nothing
14 had been clear prior to 2013, Mr. Kowalski made
15 it clear in January of 2013 that IPG has no
16 authority to represent Bob Ross.

17 And what does IPG do? What does Ms.
18 Vernon do? They go ahead and sign a claim, a
19 claim that includes Bob Ross, Inc.

20 With regard to our written objections
21 to MPAA's claims, we think we have sufficiently
22 rebutted the presumption of validity of IPG's

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1 claims.

2 We also think we have sufficiently
3 established that our written objections should be
4 granted and we urge the judges to do so.

5 Now, with regard to IPG's written
6 objections to MPAA claims, now, the judges'
7 August 29th order required all objections to be
8 in writing supported by competent evidence.

9 Now, we've noticed in the course of
10 this proceeding that some of IPG's challenges,
11 some of IPG's testimony challenging MPAA's claims
12 were being raised for the first time in this
13 proceeding.

14 Now, what we have focused on for our
15 purpose, for our part is we respond only to those
16 objections that were timely raised in writing by
17 IPG.

18 And we ask the judges to confine the
19 decisions only to those properly raised IPG
20 objections that conform with the order --- the
21 August 29 order.

22 Now, IPG's first argument in its

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1 written objection is that MPAA has failed to
2 substantiate its authority to represent 582
3 copyright owners.

4 Now, what IPG is referring to in that
5 case is a situation where IPG is asking for
6 agreements between the copyright owners and the
7 agents or agreements between the copyright owner
8 and MPAA. The judges have rejected that and
9 we're not required to do that.

10 In specific cases where there's been
11 a legitimate challenge of that nature, we
12 specifically address that in the course of this
13 proceeding.

14 In fact, the judges said that such
15 agreements are unnecessary in the absence of any
16 evidence calling into question the authority of
17 MPAA or the joint claimant that MPAA represents.

18 So, it's a general rule. It's no
19 requirement that MPAA provide evidence of
20 agreement to engage in some copyright owner or
21 between the MPAA and the copyright owners outside
22

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1 of, of course, the representation agreement.

2 Now, IPG's second argument is that the
3 foreign collection society -- that MPAA falsely
4 attributed copyright ownership to foreign
5 collection societies. IPG is focused principally
6 on Screenrights and EGEDA.

7 And IPG of course relies exclusively
8 on this infamous Excel spreadsheet which we now
9 know was not sufficiently accurate, nor was it
10 relied on by MPAA for the claims that MPAA made.

11 JUDGE STRICKLER: When you say we now
12 know it was inaccurate, that was your
13 spreadsheet, right?

14 MR. OLANIRAN: Yes.

15 JUDGE STRICKLER: We now know it was
16 inaccurate. When did you know it was inaccurate?

17 MR. OLANIRAN: I mean, we knew when we
18 were putting together the information that the
19 source of the information was not something that
20 we relied on for making our claims.

21 JUDGE STRICKLER: And it's your
22 position that the letter you sent as a cover

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1 Saunders, for better or worse, insisted that we
2 figure out a way to comply.

3 JUDGE STRICKLER: And you construed
4 that order as requiring you to create a document
5 even though --

6 MR. OLANIRAN: That was -- and really,
7 Your Honor, out of deference to the judges. And
8 sometimes the cost considerations and those time
9 constraints, I mean, this is a huge, huge record.

10 And sometimes fighting in discovery is
11 a lot worse than figuring out a way to get a
12 party to a point where everyone just gets along.

13 And I am now familiar enough, for
14 example, with the '99 proceeding where SDC
15 actually produced something and then the fight
16 went on to be, well, you produced a bunch of
17 junk.

18 JUDGE STRICKLER: If -- I'm trying to
19 figure something out. If you knew that the
20 spreadsheet was inaccurate, does that mean you
21 knew what the inaccuracies were?

22 MR. OLANIRAN: Well, I guess we -- I

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1 letter with that, made that clear?

2 MR. OLANIRAN: Yes, Your Honor. Not
3 only that, but remember once we filed a written
4 direct statement and IPG asked us in discovery
5 for documents underlying appendices, the two
6 appendices being to Ms. Saunders direct
7 testimony, we provided that.

8 And when you asked what is the
9 underlying document you relied on for the claims
10 you were making, we produced -- we produced the
11 certifications to that.

12 We never made the claim that the
13 spreadsheet underlying the testimony -- the
14 spreadsheet was created after it was submitted at
15 testimony.

16 JUDGE STRICKLER: Why?

17 MR. OLANIRAN: In attempt to comply
18 with an order taken directive as Ms. Saunders
19 testified.

20 We would have preferred to fulfill
21 that order because we knew such a -- the database
22 that was referenced did not exist, but Ms.

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1 guess knowing that -- I don't know that we knew
2 specifically that it was inaccurate and we didn't
3 know the specifics of the inaccuracies, but we
4 knew we didn't rely on it.

5 And because we didn't rely on it, we
6 didn't make any representations as to the
7 relationship between the spreadsheet and our
8 actual claim.

9 We knew and we made it very plain
10 during the initial discovery exchanges that these
11 are the documents that we relied on for the
12 written direct statement.

13 And we also provided IPG -- there was
14 a big fight about digitizing the written direct -
15 - the two appendices to Ms. Saunders' written
16 direct statement. We did that for IPG also, but
17 we were always very clear that this thing that
18 IPG was after did not exist.

19 JUDGE STRICKLER: Well, help me out
20 with a roadmap if this question makes sense. IPG
21 alleges that by looking at the spreadsheet they
22 looked at certain claims and certain claimants

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1 that don't match up and they claim were improper.

2 For each one of those -- this is a
3 situation that came up during the hearing. For
4 each one of those, what would we look at in the
5 MPAA evidence?

6 Perhaps Ms. Saunders' Appendices A and
7 B, but how would we go about saying IPG's
8 testimony with regard to the claimed -- the
9 supposed invalidity of those claims or claimants
10 is wrong? Because we could point to something
11 specifically in the MPAA evidence whether it's
12 Ms. Saunders' Appendices A or B to say, no, IPG
13 is wrong about that argument because here's the
14 line. And we can go chapter and verse and say,
15 that's incorrect, IPG.

16 MR. OLANIRAN: I understand. What we
17 establish through various exhibits, if you limit
18 yourself to what -- IPG's written objections,
19 which we believe should be what the judges focus
20 on in trying to figure out whether MPAA has
21 officially responded to IPG's challenges.

22 JUDGE STRICKLER: So, you're saying

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1 these challenges that I'm referring to came after
2 the deadline for the --

3 MR. OLANIRAN: Yes, Your Honor. And if
4 you look at the document that Mr. Boydston was
5 trying to submit yesterday, the vast majority of
6 that document falls outside of IPG's written
7 objections.

8 So, what I'm saying, Your Honor, is if
9 you look at IPG's written objections and then you
10 go argument by argument in the course of this
11 proceeding, we have responded to virtually every
12 one of them.

13 And there are some titles that we
14 don't respond to directly. And that is because
15 our argument is that while we may not have -- the
16 challenges about the title are just mere
17 assertions and don't rise to the level of
18 attempting to rebut the presumptive validity,
19 that we're still presumptively valid owners of
20 that title or representatives of that title and
21 IPG simply has not made the case. There are
22 about six or seven of those titles.

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1 With regard to pretty much all of the
2 other challenges that IPG has made, we have
3 rebutted IPG's challenges with sufficient
4 evidence.

5 JUDGE STRICKLER: Thank you.

6 MR. OLANIRAN: Now, I was talking about
7 -- I talked about the attribution of copyright
8 ownership to EGEDA and Screenrights.

9 I ask the judges to look at Exhibit
10 338 and 341. And I think we sufficiently
11 responded to that unfounded allegation.

12 With regard to the certification
13 process, I ask the judges again to revisit Ms.
14 Saunders' testimony about how MPAA goes about
15 certification. And I don't need to address that
16 in any more detail.

17 IPG also said that there was false
18 attribution of copyright ownership to
19 broadcasters. The titles that IPG uses as an
20 example, MPAA is not claiming. The source of
21 that allegation is the infamous Excel
22 spreadsheet.

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1 If you look at Ms. Saunders' testimony
2 on her list of claims, we don't claim the Emmys.
3 So, that's actually -- there's no basis for that.

4 With regard to Healthy Living, the
5 title Healthy Living, I ask the judges to take a
6 look at Exhibit 352 where there's not just
7 demonstration that IPG is mixing up the words,
8 there's also suggestion that perhaps IPG's
9 Healthy Living is probably a CBS program as
10 opposed to something that's compensable within
11 the program suppliers category.

12 Actually, in my short time left I want
13 to run quickly through the titles challenged by
14 IPG and give you references in the records for
15 each of them, and then I'm going to close with a
16 few short remarks, as I said.

17 With regard to IPG's claim regarding
18 the Emmy awards, I think I just mentioned that we
19 don't claim the Emmy awards.

20 With regards to IPG's claims on behalf
21 of American Film Institute regarding AF -- the
22 title AFI Life Achievement Award attributed to

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1 Barbara Streisand, I ask the judges to look at
2 Exhibits 349 and 342 where I think we establish
3 that this is actually rightfully claimed by MPAA.

4 With regard to IPG's claim on behalf
5 of Cosgrove Mirror Productions --

6 JUDGE STRICKLER: Which one is that?
7 Cosgrove?

8 MR. OLANIRAN: Cosgrove, yes. And
9 notwithstanding Mr. Cosgrove's affidavit we ask
10 that you look at Exhibits 305 and 306 that
11 establish that Mr. Cosgrove was just confused
12 about two different works with the same title.

13 With regard to Yesterday's Children
14 also on behalf of Cosgrove, we ask you to look at
15 Exhibit 348 and 339 for that solution.

16 With regard to Presumed Guilty, we ask
17 that you look at Exhibits 340, 343 and 350.

18 JUDGE STRICKLER: This list that you're
19 giving us now, these are all in rebuttal to the
20 allegations made by IPG that came off the
21 spreadsheet?

22 MR. OLANIRAN: Not off the spreadsheet.

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1 and Martha Stewart Living and six other titles
2 related, Exhibit 339 we believe explains -- 339
3 and 348 explain why MPAA is entitled to the
4 Martha Stewart title.

5 With regard to IPG's claim on behalf
6 of New Vision Syndication, Inside the Ropes, we
7 believe Exhibit 352 explains MPAA's rights to
8 that title.

9 With regard to the IPG's claim on
10 behalf of Timberwolf Productions regarding the
11 Outdoorsman with Buck McNeely, MPAA has made it
12 clear in Exhibit 347 that it is not even claiming
13 that title.

14 And with regard to Worldwide Pants,
15 the Late Show with David Letterman, Late Late
16 Show with Craig Kilborn, MPAA Exhibit 332
17 explains that IPG is not entitled to represent
18 Worldwide Pants in this proceeding. And that CBS
19 is the correct claimant, and MPAA represents CBS.

20 Now, there are some titles that I did
21 not mention. Jaw Droppers, Main Floor, Game for
22 Anything: Strength of Women, Inside the Ropes at

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1 They came off in their written objections.

2 JUDGE STRICKLER: Okay.

3 MR. OLANIRAN: With regard to
4 Funimation, the title DragonBall Z, we ask that
5 you look at Exhibit 336 and Exhibit 306.

6 And the only evidence I could produce
7 other than Mr. Galaz' testimony is only a search
8 result from the copyright office's public
9 catalog, which as I think I elicited from you,
10 doesn't amount to a credible challenge to a
11 presumption of MPAA's entitlement to this title.

12 With regard to IWV Media, I think
13 that's the one I just mentioned a few minutes ago
14 to please look at Exhibit 352.

15 With regard to Lawrence Welk
16 Syndication, Exhibit 347 explains why the titles
17 -- I'm sorry. Lawrence Welk Syndication for the
18 title From the Heart attributed to Lawrence Welk
19 and the American Dream, we urge you to look at
20 Exhibit 347 which again explains why they are two
21 different titles.

22 With regard to Martha Stewart Living

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1 the Open Championship, Countdown to Daytona,
2 Mountaintop Ski and Snowboarding, It's a Miracle,
3 Critter Gitters and Singsation.

4 While we don't produce any specific
5 evidence to rebut IPG's claims in this instance,
6 we do sincerely believe that IPG has not
7 sufficiently provided evidence to challenge the
8 presumptive validity of MPAA's --

9 JUDGE BARRETT: What was the second
10 title?

11 JUDGE STRICKLER: Yes. Can you give us
12 the whole list again?

13 MR. OLANIRAN: I'm sorry?

14 JUDGE BARRETT: Could you go through
15 that list again?

16 MR. OLANIRAN: The second list?

17 JUDGE STRICKLER: You started with Jaw
18 Droppers.

19 MR. OLANIRAN: Yes. Jaw Droppers, Main
20 Floor, Game for Anything: The Strength of Women.

21 JUDGE STRICKLER: That's the same
22 title?

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1 MR. OLANIRAN: Yes. Yes. Inside the
2 Ropes at the Open Championship, Countdown to
3 Daytona, Mountaintop Ski and Snowboarding, It's a
4 Miracle, Critter Gitters and Singsation.

5 JUDGE STRICKLER: So, your legal
6 position again on those is IPG should not prevail
7 because --

8 MR. OLANIRAN: It has not produced --
9 provided sufficient evidence to challenge our
10 entitlement to those titles.

11 JUDGE STRICKLER: I'm sorry. I think
12 you said it's the -- maybe I'm missing it, but
13 maybe you said it was the absence of sufficient
14 evidence. So, therefore, not any positive
15 evidence on the part of MPAA.

16 MR. OLANIRAN: Absence of sufficient
17 evidence on IPG's part to challenge the
18 presumption of validity of those claims.

19 In other words, we're saying IPG
20 merely has bare assertions that MPAA is not
21 entitled.

22 JUDGE STRICKLER: Well, they made the

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1 assertion that MPAA is not entitled to them.

2 MR. OLANIRAN: Right.

3 JUDGE STRICKLER: Okay.

4 JUDGE BARRETT: Mr. Olaniran, your time
5 would be up, but Judge Strickler asked that I
6 give you additional time because of his
7 inquisition. So, you have an additional five
8 minutes.

9 MR. OLANIRAN: Thank you.

10 JUDGE STRICKLER: You're welcome.

11 MR. OLANIRAN: I appreciate that, Your
12 Honor. And this sort of dovetails into my last
13 point.

14 We came into this proceeding thinking
15 about some of the IPG conduct that we have known
16 in the past and certainly some of the things that
17 we've experienced along the way.

18 We thought about sanctions, we talked
19 about sanctions and when I made my opening
20 statement, I said nothing about sanctions and
21 then Mr. MacLean came after.

22 I still really didn't think much of it

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1 other than he made some very poignant statements
2 about IPG conduct, and then we sat through the
3 entire proceeding.

4 And I am more convinced than ever and
5 haven't been in at least three proceedings -- at
6 least four proceedings, now with IPG, three
7 within the context of licenses and another
8 federal court action, a pattern is now emerging
9 with IPG that should be of great concern to the
10 judges.

11 I know we're concerned. I know SDC is
12 concerned. We think the judges should also be
13 concerned about this and this has to stop.

14 First, it's the blatantly fraudulent
15 conduct, in our view, when a claimant terminates
16 a representative. I'm not sure what contract
17 theory IPG is operating on. How you can be
18 terminated and still insist on meeting the
19 statutory requirement that you represent that
20 claimant as a duly authorized representative, I
21 don't know.

22 And how do you then go further to say

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1 you have the authority and consent of that
2 claimant? I'm not sure how IPG reaches that.

3 JUDGE STRICKLER: Do you distinguish
4 between -- in that type of scenario, the
5 situation such as with Feed the Children where
6 you get what appears to be or at least arguably
7 an unambiguous termination letter on July 1st,
8 2014, and then you go ahead and file again on
9 July 31st, 2014? That's one type of conduct.

10 Or the other type of conduct where you
11 get an unambiguous termination letter on July
12 1st, 2014, but there are still claims years that
13 haven't been resolved yet before that.

14 Do you think that -- and IPG construes
15 that to mean that they can still collect money
16 for the prior claims years before the termination
17 notice came in.

18 Do you think those are -- that's
19 evidence of the same type of conduct, or two
20 different types of conduct and actually consider
21 them differently?

22 MR. OLANIRAN: It's a pattern, Your

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1 Honor. It's a pattern of evidence in the entire
2 record.

3 If a contractor came to my house and
4 said, okay, I have a deal, you're going to work
5 on my house for the next year and halfway through
6 the year I don't want to work with him anymore, I
7 fire him and he insists on coming back to my
8 house and doing work for me, there are ways to
9 address termination --

10 JUDGE STRICKLER: Well, what if the
11 contractor needed to get money back for you for
12 overcharges that you had paid?

13 MR. OLANIRAN: Then sue me.

14 JUDGE STRICKLER: So, the subcontractor
15 you said, stop working for me. You say that if
16 he still tries to get that money back for you --

17 MR. OLANIRAN: He can sue me.

18 JUDGE STRICKLER: I know he can sue
19 you. But if he tries to get that money back for
20 you from the subcontractor, you're saying that
21 that's the same type of conduct as showing up at
22 your house and continuing to do work?

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1 MR. OLANIRAN: Yes. Once I say don't
2 represent my interest -- if the claimant is clear
3 about who's representing its interest, IPG cannot
4 insist, at least within the context of this
5 proceeding, you cannot satisfy the statutory
6 requirement of due authority.

7 JUDGE STRICKLER: So, it's not an
8 agency argument you're making, it's a statutory -
9 -

10 MR. OLANIRAN: It's a statutory -- not
11 an agency, no.

12 JUDGE STRICKLER: Okay.

13 MR. OLANIRAN: It's the statutory. You
14 can't not satisfy that statutory because you have
15 a prior right of action. You can make an agency
16 argument somewhere else, but the statute requires
17 you to be a duly authorized agent.

18 Now, Feed the Children is one thing.
19 Bob Ross is another. There is absolutely no
20 basis whatsoever for insisting on representing
21 Bob Ross.

22 And you heard Mr. Galaz yesterday.

55

1 Well, I feel the obligation to represent him in
2 case he decides he might want me again.

3 That letter that Mr. Kowalski wrote on
4 January 15th could not have been any more clear.
5 Could not have been any more clearer about
6 whether or not IPG should represent their
7 interest.

8 And then you'll see other stuff in
9 some of these letters. You'll see sort of the
10 bullying and intimidation tactics employed by
11 IPG.

12 I urge you to read the affidavit of
13 78-year-old Mr. Devillier and how IPG tried to
14 pressure him to respond with a list of titles.

15 We have in that affidavit, it's one
16 email from Ms. Vernon in 2011, two emails from
17 Mr. Galaz in 2012, one email from Mr. Boydston in
18 2012 threatening legal action, another email from
19 Ms. Vernon in 2014 seeking title information.

20 JUDGE STRICKLER: Let me ask you about
21 threatening legal action.

22 MR. OLANIRAN: Yes.

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1 JUDGE STRICKLER: If I understood you
2 correctly, you were saying there's a statutory
3 requirement when the -- no means no. When I tell
4 you you're not my agent anymore, that means
5 you're not my agent anymore.

6 And then you said, well, there's ways
7 to resolve this in court. You can go sue under
8 agency law.

9 So, if IPG thought it had a right to
10 continue -- had already engaged in activity for
11 prior claims here, that it could then go ahead
12 and sue. There are agency principals.

13 Well, if they have the right to sue,
14 arguably, I mean, we don't know what the merits
15 of the argument are, but it has a right to sue,
16 doesn't it also have the right to threaten to
17 sue?

18 MR. OLANIRAN: Well, it doesn't have a
19 right to threaten to sue within the context of
20 providing information for the purposes of
21 representing that claimant in a proceeding for
22 which the claimant has said in some cases; first,

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1 I don't even know if you represent me; two, I
2 don't think I have any claims.

3 If you look at Mr. Devillier, if you
4 look at FIFA as another example and you look at
5 the exchanges between IPG and FIFA, FIFA are
6 saying, I don't know if you represent me. And,
7 by the way, I don't even know if I have claims.

8 This is almost compelling claimants to
9 fabricate claims and intimidate poor Mr.
10 Devillier whose company closed several years ago
11 who is just essentially serving as a cleanup guy.

12 JUDGE STRICKLER: Well, you're right.
13 It could be compelling someone to basically
14 fabricate a -- I agree with you that could be,
15 but it could also be because we don't know if
16 they did have an agreement that it's an attempt
17 in some sort of way -- I think about it as sort
18 of like marshaling assets or mitigation of
19 damages to the extent there really was a claim.
20 Let's work on that assumption. We'll assume that
21 exists.

22 There is some efficiency, right, in

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1 going ahead and saying, let's collect the money
2 that's coming from the fund that exists that's
3 been collecting these royalties rather than have
4 to go into the cost of a state court action or a
5 state law action and then try to collect out of
6 it.

7 We have a fund here. And it's to your
8 benefit and to my benefit, claimant. So, IPG
9 would argue let's go ahead and do this together
10 rather than me having to sue you for my
11 commission.

12 Barring any evidence or pattern of
13 evidence that this was just an attempt to compel
14 the client to fabricate, why is that not, to use
15 a legal term, kosher?

16 MR. OLANIRAN: Well, if you look, I
17 mean, this is a threat. And, again, look at Mr.
18 Devillier's affidavit. Give me the titles or I'm
19 going to sue you.

20 It's not if you don't give me the
21 titles, I'm going to find a reason, a breach of
22 contract. They do mention that in some cases,

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1 but usually it's give me the titles or I'm going
2 to sue you.

3 It is the undercurrent of some of the
4 way they say, the way they operate that if you
5 look at Mr. Devillier, he had 16 titles. In one
6 of the emails which is a part of the affidavit,
7 16 titles.

8 He says to IPG, two of those titles
9 have been taken out of existence, I think he says
10 in 1993. The next 15, he says, are not
11 compensable within the commercial contract.

12 The only one that may be compensable,
13 the Monty Python, he says, well, I'm not really
14 sure which Monty Python. But to the extent it's
15 compensable, it's compensable within the PBS
16 category.

17 Now, I can't -- he could not have been
18 clearer about the compensability of his titles.

19 But notwithstanding that, he gets
20 bombarded with emails from everybody within IPG,
21 you know, confirm my engagement. What do you
22 mean you don't have -- it's that intimidatory

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1 tactics, the fraud with which even if you could
2 have a way of arguing that Feed the Children
3 somehow falls under some legal theory, which I
4 don't think it does, Bob Ross takes the cake. I
5 mean, that's just flat out don't represent me.

6 And it serves this notion of the
7 almighty IPG we leave when we want to leave, not
8 when you tell us to leave.

9 Now, I have to tell Your Honor the
10 strength of any system, any governmental private
11 system, the strength of their system relies on
12 the honesty of its participants.

13 There is no foolproof system, you
14 know. You go to DMV, you know, to get a driver's
15 license.

16 JUDGE STRICKLER: This is why we have
17 a presumption of validity in these cases.

18 MR. OLANIRAN: Thank you. So, we think
19 -- we believe based on the hearings to date,
20 specifically based on the information which we
21 have in this proceeding that this is a problem
22 and we urge the judges to take action. We will

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1 join with SDC in their request for the sanction
2 of IPG. And we have no intention of punishing
3 those claimants who have validly claimed
4 entitlement to royalty.

5 JUDGE STRICKLER: A final question for
6 you. Maybe a final question. You never really
7 know.

8 (Laughter.)

9 JUDGE STRICKLER: Your argument about
10 a pattern of conduct and you have various, maybe
11 six or so, categories where you say there's been
12 improper activity or insufficient proof or -- I'm
13 characterizing loosely intentionally here just to
14 build sort of a predicate for the question.

15 Is there evidence in the record that
16 lets us know what percentage of all the
17 representation agreements, or claimants, or
18 claims that IPG has that constitute the ones that
19 you say are infirmed in the program suppliers
20 category?

21 And the same question would go
22 ultimately to the Settling Devotional Claimants

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1 We have -- we don't -- we have no way of really
2 knowing.

3 And the fact that Bob Ross came to
4 light, it just completed the truth. The fact --
5 you should actually think, well, why would Feed
6 the Children notwithstanding possible legal risk,
7 fire IPG right in the middle of a proceeding?

8 That should raise questions. Smack in
9 the middle of the proceeding we don't want you
10 doing anything for us anymore.

11 That's a fairly drastic step which I
12 don't think has ever happened in the course of
13 these proceedings.

14 So, those are the things when you put
15 them together, you have to start wondering, okay,
16 how do we maintain the integrity of the system?
17 We think IPG is a significant problem.

18 JUDGE STRICKLER: That's for argument,
19 basically.

20 MR. OLANIRAN: Thank you.

21 THE COURT REPORTER: Your Honor, can we
22 go off the record for a minute?

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1 category as well. Because you've raised a number
2 of instances that you say are a pattern.

3 Does that represent 10 percent of the
4 claims? 80 percent of the claimants? 40 percent
5 of the representation agreements? Or is there
6 nothing in the record that would tell us that?

7 MR. OLANIRAN: Actually, there's
8 nothing in the record. And I'll tell you why.
9 That is the challenge.

10 When we responded to -- when we did
11 our objections to IPG's claims, and we have about
12 eight affidavits, for example, those were based
13 solely on the claimants that we represented, that
14 we knew from our claimant base were not
15 represented by IPG. We took care of that.

16 We have no way of really knowing other
17 than how some of those claims were manifested
18 within the records that IPG provided to us, we
19 have no other way of finding out who's hanging
20 onto IPG because of a vigorous threat, who's
21 hanging onto IPG because of being intimidated,
22 who's hanging onto IPG because of the bullying.

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1 MS. BARRETT: We're going to take a
2 five-minute break.

3 (Whereupon, the proceedings went off
4 the record at 10:41 a.m. for a brief recess and
5 went back on the record at 10:51 a.m.)

6 JUDGE BARRETT: Please be seated. I
7 don't see -- oh there he is. Mr. Boydston?

8 MR. BOYDSTON: I think that's me.

9 JUDGE BARRETT: Okay. Officially, I
10 believe you have 50 minutes; is that correct and
11 --

12 MR. BOYDSTON: My client tells me he
13 felt like we have 53, but it's pretty close.

14 JUDGE BARRETT: Well what you really
15 get depends on Judge Strickler.

16 MR. BOYDSTON: I understand.

17 (Laughter.)

18 JUDGE BARRETT: Okay. Go ahead, Mr.
19 Boydston.

20 MR. BOYDSTON: Thank you, Your Honor.
21 First let me again thank the Panel here for
22 their patience and attention. There's a lot of

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1 different issues here, and it is difficult to
2 follow, and I appreciate your very close
3 attention, your note-taking, and that's all a
4 litigation really -- not all, but I suppose
5 that's mainly what a litigant desires in
6 adjudication, is a good faith and good attention
7 from the trier of fact or the judge, and you've
8 certainly given us that and we appreciate it.

9 There are essentially four different
10 matters before you now, the MPAA challenge to
11 IPG, IPG's challenge to MPAA, and IPG's challenge
12 to SDC and SDC's challenge to MPAA. I'm actually
13 going to do something real unusual.

14 I'm going to address the last one
15 first, because you've heard enough of it, because
16 it's very straightforward, and essentially I'm in
17 large submitting on the papers with regard to the
18 IPG challenge to the SDC claims.

19 It is frankly quite simple, and based
20 purely on the Exhibits 1 through 10, for which
21 there's a stipulation, and those were all things
22 that were filed with Your Honors. Basically, the

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1 argument is this, is that there were independent
2 claims filed by Billy Graham and DayStar in the
3 devotional category. Those were then dismissed,
4 retracted.

5 Then, the SDC tried to say oh, but now
6 we're asserting through us, the SDC, and we don't
7 believe that that's permitted, based upon the
8 statutes and the regulations. That's about it.
9 It's up to you to make that legal call. We're
10 giving the authorities to you, and you can look
11 those over and probably there's no further
12 comment by me I don't think.

13 Now with regard to -- let's go back to
14 the top, as they like to say in Hollywood, the
15 MPAA rebuttal of the IPG claims. Now first of
16 all, there is this issue about the presumption,
17 and you'll recall that I said at the beginning, I
18 believe that we're entitled to the presumption,
19 but we're not leaving it to chance.

20 We have very carefully presented
21 evidence of IPG's rights to represent all the
22 claimants for which it filed a notice to

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1 participate in these proceedings, and I'm going
2 to address all the issues raised by Mr. Olaniran
3 and the MPAA regarding the presumption.

4 But first I want to go to the specific
5 evidence that we presented, that ties and it
6 confirms IPG's contractual right to represent the
7 programs and claimants that it purports to
8 represent. Again, Exhibit 115 is I think sort of
9 the holy grail of this exercise.

10 It's a chart prepared very carefully
11 by IPG, which references the documents that are
12 set forth in the other exhibits, which I'll
13 catalogue very briefly in a second. Oh no. I
14 guess I'll do it now.

15 Exhibit 101 are representation
16 agreements. Now there is not a representation
17 agreement for every single IPG claimant, as has
18 been made very clear. So we don't just rest on
19 that.

20 Exhibit 102 are confirmations and
21 acknowledgments that we solicited and obtained
22 from certain claimants. We didn't get them from

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1 all the claimants, because for claimants for whom
2 we had a representation agreement for which there
3 was no real controversy, we do not feel it was
4 necessary to make the additional effort to get an
5 acknowledgment.

6 Sometimes we got one anyway, but we
7 didn't make it -- as Ms. Vernon explained, we
8 had to -- IPG had to marshal its resources and
9 pursue the acknowledgments from parties who we
10 didn't have an original contract with, and that
11 took more time, such that we didn't exactly try
12 to get an acknowledgment from people for whom we
13 already had representation agreement and other
14 evidence, that made it pretty clear there was a
15 right.

16 So Mr. Olaniran has tried to say
17 -- and by the way, if I get to talking too fast,
18 please stop me. I have a tendency to do so, and
19 I apologize, and there's a lot to cover. But
20 I'll try and keep my speed to a reasonable level.

21 Mr. Olaniran made the comment that
22 gee, for some of these MDs that didn't bother to

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1 give IPG an acknowledgment, there should be a
2 question mark on them. I disagree. Where we
3 already had a valid contract and no one's really
4 made any dispute about it, and we have
5 correspondence by which --

6 Not just correspondence self-servingly
7 from IPG, but correspondence back from that
8 claimant saying yes, these are our programs,
9 things like that, I don't believe a confirmation
10 is necessary.

11 However, there are a lot of situations
12 in which one was necessary, because IPG, and in
13 many cases or sometimes anyway, the claimant,
14 didn't have a copy of the contract. So we did
15 what was reasonable. We said well, you know, we
16 both believe that there was a contract, although
17 neither one of us has one.

18 What can we do to solve this problem?
19 In 2000-2003, a number of claimants were thrown
20 out because there was no confirmation and there
21 was no original contract. So we did the
22 reasonable thing. We said well, for the

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1 particularly legible. Some of it is,
2 unfortunately some of it isn't. We will be
3 submitting a legible copy immediately after these
4 proceedings.

5 There again, Exhibit 115 identifies
6 the different Bates stamp numbers that are
7 relevant to the relevant claimants, IPG
8 claimants. Exhibit 106 is referenced in 115, and
9 also Exhibit 108. Those both contain
10 correspondence between IPG and the claimants,
11 again with Bates stamp numbers to make it so that
12 you can look through this.

13 Now it's my guess that when you go
14 through this, there will be some things -- you'll
15 say well, I don't need to look through every one
16 of these. But there will be others you'll say
17 well, okay, that entity. I know there was a lot
18 of talk about that. You may look down the column
19 in 115, see the name of the MD.

20 Look across, you'll see the Bates
21 stamp numbers corresponding with these exhibits,
22 and you can draw yourself directly to the pages

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1 claimant, will you sign an acknowledgment saying
2 that yes indeed, IPG had the authority when it
3 filed the claims?

4 And almost all of them MDs, I think
5 all of them, and if not I think it was maybe -- I
6 think it was almost all said yes, and did sign
7 the acknowledgment, returning the acknowledging
8 to IPG.

9 Judge Strickler asked some questions
10 about this earlier on. Those acknowledgments are
11 saying yes, IPG has the right to do this and
12 always had the right to do this. We want IPG to
13 collect this money for us.

14 That is -- and those acknowledgments
15 are in Exhibit 102, and in Exhibit 115, you can
16 cross-index the individual claimants with the
17 category that's -- the column that's entitled 102
18 and see a Bates stamp number or numbers there
19 that will direct you to the specific pages.

20 In addition to that, Exhibit 105
21 represents catalogue research done on IMBD and
22 other sources. You'll recall it's not

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1 in question.

2 If we had nothing else to do in this
3 world and all the time in the world, I suppose I
4 might go through and do that, although even then
5 that might be a bad decision, because it would
6 probably bore the heck out of everybody. But in
7 lieu of that, instead we've made the chart.

8 Now with regard to this issue about
9 claimants, IPG claimants that have terminated, I
10 think that Judge Strickler made an accurate
11 point, that I think it's -- that it can be
12 divided into two different circumstances.

13 One is a circumstance where an IPG
14 claimant sends notice to IPG. IPG gets it, sees
15 it and says yes, I see you have terminated. But
16 there is a post-termination contract right here
17 that says that we can still go ahead and collect
18 on the filings that we've already made for you.

19 In addition to that, it usually says
20 that the termination is effective at the next
21 semi-annual period. So oftentimes that means
22 there will be at least one more time period in

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1 which to file, IPG can file a claim.

2 The other category is where IPG,
3 there's a termination letter, and IPG has
4 continued to file claims after that. Now I'm
5 going to deal with these each individually.
6 Let's talk about the first instance.

7 The first instance can be
8 characterized in part, or one that comes to mind
9 right now is Feed the Children, although there
10 are others. Now with regard to Feed the
11 Children, Feed the Children gave notice to IPG on
12 January 1st of this year, that it was terminating
13 the agreement. Fair enough. It has a
14 contractual right to do so.

15 The contract, however, says that when
16 they terminate, that becomes effective at the
17 next semi-annual period, which would be December
18 31st of this year, and it allows IPG to file
19 claims within that six month period, and it
20 allows IPG to pursue that claim and any claims
21 that IPG has already filed on behalf of Feed the
22 Children.

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1 Now that is a question of contract
2 interpretation, and the black and white letters
3 of the contract say that in those situations, IPG
4 does have a post-termination right to collect for
5 those particular claims that have been filed.
6 After that, it does not.

7 JUDGE STRICKLER: What about the
8 argument that came up previously, that regardless
9 of whether there's an agency right under
10 principal agency law, that's a post-termination
11 right, that under the statute and under the
12 regulations, when a principal claimant says no,
13 that's it, you don't represent us, you have to
14 stop, that it's not a matter simply of principal
15 agency law, but it's a matter of statute. Do you
16 have a response to that?

17 MR. BOYDSTON: Well, I think the
18 statute contemplates whether or not by some
19 contractual agreement between the owner of the
20 material and the entity representing it, whether
21 or not the entity representing it has a legal
22 right to make that claim.

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1 In other words, the statute says you
2 have to have a legal right to make that claim.
3 You have to be authorized to make that claim.
4 Whether or not you're authorized is determined by
5 the authority granted in the contract, and that
6 requires some interpretation of the contract.
7 JUDGE STRICKLER: And that requires --
8 it's your position the Board can do that
9 interpretation of the contract.

10 MR. BOYDSTON: Well, I think there's
11 two possibilities. One is the Board can make
12 that interpretation. I say there's two
13 possibilities, because you'll recall the NBC
14 versus Worldwide -- not Worldwide Sensors, versus
15 Worldwide, I forgot the name.

16 It's a case that came down years ago
17 involving Little House on the Prairie and NBC, in
18 which the court said it's not the place of the
19 Copyright Office to interpret contracts
20 essentially.

21 That's why I say there may be some --
22 there may be two possibilities. One possibility

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1 is yes, the Board interprets the contract to some
2 degree.

3 The other possibility is, and I think
4 this is kind of what that decision suggests, the
5 other possibility is that what the Board does is
6 it says well, we're going to distribute this
7 money to IPG.

8 Whether or not IPG has a right to it,
9 a portion of it or not vis-a-vis the claimant is
10 for the IPG and the claimant to hash out in state
11 court. At that point, that's exactly what would,
12 you know, that's presumably what would happen.
13 The claimant could then go to -- the other would
14 go to state court, file an action saying we've
15 got this contract.

16 These are the rights, and the state
17 court would hash it out. Again, it's a question
18 of interpreting that NBC decision.

19 JUDGE STRICKLER: So your position is
20 if we conclude that we can't make the common law
21 contract determination, that we should award 100
22 percent of the money to IPG, and then let the

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1 claimant chase IPG in state court?
 2 MR. BOYDSTON: Or vice-versa, IPG ends
 3 up trying to, depending upon -- and again, I
 4 don't --

5 JUDGE STRICKLER: What's your vice-
 6 versa?

7 MR. BOYDSTON: Well if IPG -- you
 8 know, I guess it would be that. I guess the
 9 money -- because the money would come to IPG, and
 10 then if IPG didn't pay the money over to the
 11 claimant, then the claimant would be suing IPG.

12 And I think really my answer would be
 13 to read the NBC case very carefully. My
 14 recollection of the NBC case is that it says that
 15 the money should go to the claiming entity, and
 16 then the claiming entity and any others with a
 17 claim on that fight it out in state court.

18 And I'm not really saying -- this is
 19 coming from -- my point is it's not coming from
 20 my head. It's coming from the decision, because
 21 the embraced -- in that case embraced just this
 22 conundrum, you know. What happens when there's a

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1 contractual dispute, because the alternative is
 2 no money is awarded at all.

3 My memory is that the Court's problem
 4 with that was well, wait a minute. What if the
 5 claimant, you know -- then we're not only denying
 6 money to the entity, the agent if you will; we're
 7 also denying it to the end owner of the material,
 8 and that wouldn't be very nice.

9 So we should give it to somebody, so
 10 at least it's within each of their ability to
 11 grab a piece of it, albeit perhaps through
 12 litigation.

13 Now with regard to the other category
 14 of situations, and this includes A&E, Golden -- I
 15 can't remember, I think it's Golden Family, Urban
 16 Latino and Bob Ross. Now with regard to a number
 17 of these entities, Urban Latino, Golden Family
 18 and A&E, IPG never received the original
 19 termination letters, because they went to IPG at
 20 a time when IPG was controlled by Marian Oshita.

21 Now in fact, a number of these issues
 22 we didn't see any -- we didn't even know about

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1 until this proceeding, when they were produced as
 2 exhibits, and there were allegations made about
 3 them in the MPAA's rebuttal statement.

4 The reaction of IPG is all right, we
 5 never knew that there was such a termination.
 6 We've been dealing with these people for years.
 7 We've been giving them, we've been, you know,
 8 exchanging correspondence with them. They've
 9 given us their program information. Sometimes
 10 they've signed acknowledgments.

11 We didn't know that there was a
 12 termination. Now that we know there's a
 13 termination, fair enough. We don't have the
 14 right to collect. But it was an innocent
 15 mistake, and a mistake aided and abetted by those
 16 parties oftentimes cooperating with us, even
 17 after they issued a termination.

18 In those kind of situations, I think
 19 that we will -- IPG should stop and make no
 20 further collections. But it's not fraud and it's
 21 not dishonest. It may well -- it's certainly a
 22 mistake, but it's one borne of IPG simply having

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1 never gotten the original agreement, and in many
 2 cases, the claimant itself not even recalling it
 3 had issued a termination.

4 JUDGE STRICKLER: Which claimants did
 5 you say, A&E, Urban Latino, Golden Family?

6 MR. BOYDSTON: Yes, and I'm not
 7 positive that's extensive, but those are the ones
 8 that were mentioned -- those are the ones that
 9 were mentioned that I can recall. In fact, if
 10 you'd give me just a moment, I want to look at my
 11 notes from Mister --

12 I think that's it. If you want me to,
 13 I'll point them out. But there's also Bob Ross,
 14 Inc. though, and that is of course a special
 15 case. I mean it's similar to these in some
 16 respects, but it's not exactly similar.

17 Bob Ross is unique because Bob Ross
 18 has never issued a termination, because Bob Ross
 19 only apparently had mandates agreements with IPG,
 20 and then after that signed an agreement with All
 21 Global Media.

22 JUDGE STRICKLER: In response to my

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1 question, you should know your client just passed
2 you a note. Maybe it responds to the question.

3 MR. BOYDSTON: I'm sorry. We're
4 making no claim whatsoever to A&E in this
5 proceeding. There was, I think at some point, a
6 termination by A&E. But just to be clear, IPG
7 did not include A&E on notice to participate in
8 this proceeding.

9 So now to get back to Bob Ross, the
10 problem -- the difficulty that IPG had with Bob
11 Ross was when IPG, when Mr. Galaz and Ms. Vernon
12 started filing claims for IPG, they looked back
13 to what had been filed the previous three years,
14 and they saw Bob Ross.

15 Therefore, they assumed that there was
16 an ongoing agreement with Bob Ross. We only
17 know, with the production of mandated agreements
18 in this proceeding, whenever it was, we actually
19 got them two weeks ago, that's the first we ever
20 saw of those mandate agreements, and that's the
21 first IPG ever saw of the All Global Media
22 agreement.

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1 As you know from Exhibit 53 that we
2 introduced, when Bob Ross communicated with us,
3 me personally, our reaction was okay, can you
4 give us the information? Can you give us the
5 documents, because we've been filing these claims
6 for you for many years, getting pertinent
7 information from you for many years, paying you
8 money for many years.

9 So if there's a termination, please
10 provide to us. You say there's an agreement with
11 All Global Media, please provide it to us.

12 This created a second conundrum, which
13 was because we didn't know what claims had been
14 filed on behalf of Bob Ross, Inc. by All Global
15 Media, IPG's concern was that while Bob Ross was
16 saying don't represent us anymore, because we
17 have a contract with All Global Media, IPG was
18 highly doubtful that All Global Media had even
19 had filed for many of these years, including the
20 years -- these years, 2000 -- the recent years,
21 2013 and 2014.

22 As a result, had IPG not filed a claim

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1 for the 2012 calendar year in July 2013, and for
2 the 2013 calendar year this July, July 2014, and
3 then it turned out that All Global Media had
4 filed no such claims either, then Bob Ross, Inc.
5 would have no rights to any royalties for the
6 years 2012-2013, because Bo Ross, Inc. clearly
7 thought it had such right through All Global
8 Media.

9 What we know of All Global Media was
10 that it was no longer active, and it hadn't filed
11 claims in any of those years. So IPG did file
12 those claims for Bob Ross, Inc., not out of a
13 malicious desire to do harm to Bob Ross, Inc.,
14 but as a safeguard in case Bob Ross, Inc. then
15 said well wait a minute. You mean we get nothing
16 for 2012? We get nothing for 2013? I thought
17 All Global Media had filed for us.

18 That may be what their instruction was
19 to IPG anyway, but it was better to be safe than
20 sorry, because IPG can always withdraw those
21 claims by not including them in the notice to
22 participate, which I'm sure now is what's going

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1 to happen.

2 But in the absence of information,
3 that is the dilemma that IPG was put in, and I
4 think that the conduct by IPG again was not
5 malicious, was not fraudulent, was not trying to
6 hurt anyone.

7 It was just trying to preserve those
8 rights in case, as sometimes happens, an IPG
9 claimant then came back later on and said wait a
10 minute. I didn't understand. I thought All
11 Global Media had protected me. I thought All
12 Global Media and IPG and WSG were all the same
13 animal. So that is what's going on with Bob
14 Ross, Inc.

15 Now another party I want to address in
16 this regard about authority is the BBC. You've
17 got a lot of different things coming at you from
18 the BBC. There is Exhibit 325 of the MPAA
19 exhibits, in which Vernon Chiu gives a somewhat
20 complex explanation of just exactly what claims
21 IPG is authorized to pursue on behalf of the BBC,
22 and what it is not.

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1 In addition to that, there's Exhibit
2 17, the IPG's Exhibit 17, which is a statement
3 that was filed, prepared and filed in the 2000-
4 2003 proceedings, and in addition to that,
5 there's Exhibit 116, which Mr. Chiu also makes
6 certain representations about IPG's authority.

7 Those three have to be triangulated.
8 To do it would probably take me ten minutes. I'm
9 not going to try to. But I recommend you to
10 examine those three. They are sometimes
11 contradictory. Suffice it to say that the BBC
12 certainly agrees that IPG has a right to make
13 certain claims for it.

14 It has made different statements on
15 that at different times, and it is also clear
16 that the BBC is saying that IPG is not entitled
17 to make claims for certain years. Somehow that's
18 got to be done and figured out, and clearly IPG
19 is entitled to some claims for the BBC and is not
20 entitled to others.

21 IPG doesn't want to make any claims
22 it's not entitled for. How to determine that

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1 There's a huge difference between the
2 way IPG gets confirmation of its claimants'
3 programs, and the way the MPAA does it. The MPAA
4 targets its claimants and says we think you, ABC
5 Family for example, we think you own these dozen
6 programs.

7 We've looked through all the program
8 lists, and we think you own these dozen. In
9 contrast, IPG doesn't cherry-pick like that. IPG
10 says to its claimants this is a list of 60,000,
11 sometimes 40,000 separate titles.

12 We don't guess or suggest which ones
13 are theirs. We say, and a lot of people balked
14 at it at first, look through the 40,000 and tell
15 us which ones you believe are yours. Now that is
16 a more rigorous process than cherry-picking a
17 dozen and asking for confirmation.

18 IPG has done that on purpose, to give
19 greater validity to what it makes claim for, and
20 also make it more efficacious. So the
21 implication by the MPAA that that is somehow a
22 bad way to go about or inferior to MPAA's, I

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1 probably really requires a long conversation with
2 Mr. Chiu, because he's given contradictory
3 signals about different years.

4 With regard to the communications by
5 IPG with its claimants, in their briefing that
6 MPAA referred to a phishing scam, and that's
7 phishing, P-H-I-S-H-I-G, which is an Internet
8 scam if you will, where you send out a bunch of
9 emails and hope you catch people in something.

10 That's not at all what was going on,
11 and the testimony of Denise Vernon made that
12 clear. IPG sent emails to everyone it believed
13 was a claimant through IPG, to gain information
14 to confirm that, and also to confirm the exact
15 programming that a claim should be made for.

16 In this regard, I want to focus on
17 the method that was done. Also the -- you
18 probably have it in your notes, but the emails at
19 issue that I'm referring to Ms. Vernon testified
20 about, were Exhibits 109 to 113. Now we've
21 talked about this in our papers, and I'm going to
22 describe it very quickly again.

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1 don't think holds any water, for the reasons that
2 I think are obvious.

3 Let's talk now about the question
4 about devotional programming being, you know, and
5 the testimony of Mr. Rovin. Mr. Rovin has I
6 thought personally a fascinating resume and
7 career history. He is clearly a well-read man
8 who's done a lot of interesting things in his
9 life, written a lot, studied religious
10 programming.

11 But I want to point out, and I'm not
12 trying to be a snob, but the fact of the matter
13 is his only formal training that he testified
14 about, in terms of religion and spirituality, was
15 studying Kung Fu. Now I haven't studied Kung Fu,
16 but I'm sure there's a lot there to be learned
17 and gained and a lot that is a good quality in
18 all respects.

19 However, Mr. Rovin is being asked here
20 to opine as to what fits within the devotional
21 category in these proceedings, and it's been
22 defined by the devotional category includes

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1 programs of a primarily religious theme.

2 Now I don't believe that Mr. Rovin has
3 the educational background to do that. More
4 specifically, I don't think he has the background
5 to make this specific call for these proceedings.
6 He has testified before as an expert witness, as
7 his report says.

8 But never as an expert witness
9 distinguishing programming that is of a quote-
10 unquote primarily religious theme, versus
11 programming which is not. Now much of his
12 testimony was based on research into certain
13 writings on that subject, many back in the
14 1920's, when there was debate in the media about
15 whether certain radio programs or other things
16 like that were religious or not.

17 Now that's interesting, but that was
18 for that particular application. It doesn't
19 necessarily translate to this application. Now
20 getting more into the fundamentals of his
21 viewpoint, his viewpoint was that to be primarily
22 religious programming, or programming with a

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1 primarily religious theme, there had to be a
2 proselytizing or homiletic, I have a very
3 difficult time with that word, message being
4 sent.

5 And it's in essence, and asked him in
6 his cross-examination, in essence there needs to
7 be a religious message being sent to the audience
8 to qualify or to count in the definition of
9 devotional category, of being primarily --
10 programming with a primarily religious theme.

11 I asked him well, I asked him this,
12 but I observed that criteria says theme, not
13 message. It's not does the programming have a
14 primarily religious message; it's theme, and
15 theme and message may be similar, they may be
16 interrelated, but they're not quite the same
17 thing.

18 I think that if you review the
19 exemplars that we provided you, I think that you
20 will find that when you review it, that there's
21 no question that those programs have a primarily
22 religious theme. They deal with things out of

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1 the Bible; they deals with stories surrounding,
2 you know, various holidays.

3 One of them is Christmas, but the
4 Christmas one is not just, you know, a non-
5 secular Christmas if you will, and the best way
6 to judge that is simply to view it or view part
7 of it. It's about the Christian Christmas, i.e.
8 Christ being born in Bethlehem, etcetera,
9 etcetera, etcetera.

10 I submit to you, if you watch that, I
11 believe that you will come away with the
12 conclusion that that had a quote-unquote
13 primarily religious theme.

14 JUDGE FEDER: Mr. Boydston, is there
15 anything else on the record, other than Mr.
16 Rovin's testimony, that explicates what a
17 religious theme is, or are we essentially to know
18 it when we see it?

19 MR. BOYDSTON: The latter. I'll be
20 perfectly honest. It's the latter, I believe. I
21 mean, you know, and this is a subject to which
22 frankly I think we can debate for a long time.

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1 There was some debate about that in the prior '99
2 proceeding, in connection with Mr. Brown's
3 testimony.

4 Mr. Brown has a bit different view, I
5 would say, which is actually -- Mr. Rovin in his
6 report said his view was more narrow than Mr.
7 Brown's. He reviewed Mr. Brown's testimony. Mr.
8 Brown hasn't been offered as a witness. The SDC
9 has pulled Mr. Brown off the table, and I
10 understand that.

11 But just to answer your question, no,
12 it has really not, because Mr. Brown is not -- no
13 longer in this proceeding if you will. It's only
14 Mr. Rovin's testimony, and my request to the
15 Judges is to obviously take into consideration
16 his testimony, and then to take into
17 consideration what you see in these particular
18 programs.

19 JUDGE FEDER: So to be clear, IPG is
20 not proposing any different standard, other than
21 just a subjective impression?

22 MR. BOYDSTON: Well the standard as I

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1 understand it, and as Mr. Rovin understands it
2 and said at the beginning of his report is the
3 criteria is primarily religious themes. Does
4 that answer your question?

5 JUDGE STRICKLER: That's the legal
6 definition.

7 MR. BOYDSTON: Yes.

8 JUDGE STRICKLER: That applies. The
9 question from Judge Feder, I think went beyond
10 that, whether there's anything that explicates
11 what is religious.

12 MR. BOYDSTON: No, there is not.
13 There is not.

14 JUDGE STRICKLER: Okay.

15 JUDGE FEDER: Thank you.

16 JUDGE STRICKLER: I want to focus on
17 one of the other words in that definition,
18 "primarily." What if you had -- the debate in
19 this case comes up because there seem to be at
20 least dual or maybe more themes within particular
21 programs. So say you have, you know, and that's
22 not a program.

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1 too much time on it.

2 Suffice it to say IPG put into
3 evidence what it sent to the CRB. The same list,
4 exact same list was attached to both cable and
5 satellite. Under the CRB records, the cable list
6 is intact. The satellite one is not.

7 IPG knows what it sent out. It's
8 highly -- well, I can't say that. Clearly it's
9 possible that some pages got missing internally
10 at the CRB. Even if not, it was clear that it
11 was the same attachment on both cable and
12 satellite.

13 As a result, there could be really no
14 prejudice here to the MPAA. They were put on
15 notice that IPG's were there, and they were
16 missing pages. It would have been easy to say
17 gee, why are there missing pages, to remove any
18 possibility of prejudice.

19 With regard to threatening, IPG
20 threatening claimants, IPG has only pressed its
21 legal rights where it needed to, and the primary
22 example relied on by the MPAA is the Devellier

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1 In this case you have A Charlie Brown
2 Christmas. It's a lovely story that children can
3 enjoy as a cartoon, and it's also got a religious
4 theme about Christmas in it as well.

5 If Judges were to come to the
6 conclusion that it has both themes and it's
7 impossible to determine which is the primary
8 theme, does the tie go to the runner, tie go to
9 the fielder? Where do you recommend we go with
10 that one?

11 MR. BOYDSTON: Put it on my list,
12 pretend to be a judge, Your Honor. Maybe I'm a
13 little bit harsh, but I'd say tie goes -- if it's
14 not, if neither one is primary, then it is not --
15 it doesn't meet the criteria. It does say
16 primarily religious theme. That suggests to me
17 that the religious theme must be at least 51
18 percent.

19 I want to turn now to the issue about
20 the 2008 satellite filing and the missing pages.
21 I think this has been fully explicated, and I am
22 running short on time. So I'm not going to spend

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1 Donegan matter, in which IPG ultimately did raise
2 the specter of legal action, but only after
3 Devellier had knowingly handed over proprietary
4 information to Mr. Olaniran, the MPAA's attorney.

5 I'd submit that under those
6 circumstances, that's not bullying. That's not
7 stepping out of line. That's simply trying to
8 protect your rights and your proprietary
9 information.

10 With regard to the IPG rebuttal of
11 MPAA, first of all, there are no documents,
12 documentation of any contracts between the
13 program owners and the SDC's, and IPG -- sorry,
14 and the MPAA's agents. Of 655 MPAA claimants,
15 582 come through these agents. They're all
16 identified in Exhibit 12.

17 The only contracts -- excuse, strike
18 that. There are also no contracts with any
19 subagents such as EGEDA. EGEDA is supposedly a
20 subagent of Screenwrites, and yet we have no
21 contractual evidence in the record that ties
22 EGEDA to the programs it claims.

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1 Exhibit 13 identifies the programs
2 that Screenwrites claims to be an owner or
3 Screenwrites claims to be an owner, not an agent,
4 but actually an owner, which you know, is absurd.
5 Exhibit 16 EGEDA, observes instances in which
6 EGEDA claims to be an owner.

7 Now with regard to -- there are a
8 number of examples where IPG has presented
9 specific evidence of program owners whose
10 programs are being claimed by the MPAA, and in
11 fact they're saying that is not the case.
12 Exhibit 18 is in reference to the Academy of TV
13 and the Emmy Awards.

14 Well now the MPAA says we're not
15 claiming the Emmy Awards, and now we're going to
16 dive in briefly to the Excel spreadsheet issue.
17 It sure looked like they were claiming it on the
18 Excel spreadsheet, and many of these others that
19 now MPAA is backing off of.

20 Why did IPG make those claims?
21 Because in response to your order, we were given
22 the Excel spreadsheet. We were never told that

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1 it was full of malarkey, and yet that's now what
2 the MPAA is stating.

3 And so at best, they've sent us on a
4 fool's errand chasing down certain claims. At
5 worse, they created a document which what would
6 have happened if we had not reviewed that and
7 said wait a minute, there are claims in this
8 document that are incorrect.

9 The MPAA says we would have never
10 relied on that Excel spreadsheet to make, you
11 know, to make actual claims. We would relied on
12 our certifications. Well how do we know that?

13 We might have said, you know, we've
14 already produced this Excel spreadsheet in
15 response to an order by the Judges, and we're
16 going to use that as the basis for our
17 distribution claims in the next round here.

18 Well, they certainly won't do it now,
19 because we all know that that's inaccurate. But
20 it leads one to think what was the purpose of
21 creating a document and giving it to us that was
22 inaccurate, rather than giving us the electronic

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1 files from which it was created, which is really
2 in line, more in line with what the July 30th
3 order was in this regard in the first place.

4 Moving back though to our rebuttal of
5 the IPG or the MPAA claims, some of the other
6 entities involved, AFI and the Barbara Streisand
7 show, Exhibit 21 makes clear that that is not --
8 should not be a claim within the MPAA claims.

9 The Watercourse Road Productions
10 statement in Exhibit 27 and also take a look at
11 Exhibit 29 on that issue, with regard to the show
12 Critter Gitters. This is probably the most
13 egregious example of the MPAA making claim for a
14 program it has no entitlement to.

15 It makes that claim through Litton
16 Syndication. Litton Syndication only had those
17 rights through 1999, and that is made clear by
18 Exhibit 30, its original contract to IPG, where
19 it's stated in the contract that its rights only
20 went to '99.

21 Nevertheless, all these intervening
22 years, they've got money for Critter Gitters

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1 through the MPAA, and that's also despite the
2 fact that in the 2000-2003 proceeding, Mr. Moyer,
3 the owner of Watercourse Road Productions and the
4 true owner of Critter Gitters, filed a statement,
5 which I believe is Exhibit 27, jumping up and
6 down saying I own this, not them. The MPAA has
7 no right to this.

8 Yet to this day, the MPAA is making
9 claim for that program. It has no explanation,
10 no explanation has been offered as to why not.
11 The only rebuttal to that is we don't think the
12 IPG evidence is good enough. We've got the word
13 of the owner, we've got the original contract.
14 I'd say that's good enough evidence.

15 Exhibit 125 are a number of printouts
16 from the Copyright Office which detail, excuse
17 me, which detail the owners of programs for
18 certain programs, for which the MPAA is making
19 claim for, and you can see right on the face of
20 that that the owner claimed by the MPAA is not
21 the same owner on those printouts.

22 JUDGE STRICKLER: Which document is

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1 that?

2 MR. BOYDSTON: Exhibit 25.

3 JUDGE STRICKLER: Thank you.

4 MR. BOYDSTON: Now the MPAA has said
5 well those are not entirely determinative.
6 They're right. They're not entirely
7 determinative. There could be other contracts
8 that says, Owner A, who's on the printout, has
9 actually transferred its right to Agent B. But
10 we don't have that stuff.

11 So without anything else, those
12 printouts should be given effect. There's a
13 short list here of other entities for which we
14 provided evidence, to demonstrate that these were
15 claims claimed by the MPAA but they're owned by
16 other people.

17 There's Exhibit 22, regarding
18 DragonBall Z, 24 regarding Beast Wars, and just
19 as an aside, there again the MPAA has no answer
20 for these. Exhibit 25 regarding the Late Late
21 Show, there again, the MPAA has offered the
22 letter by CBS, in which it says oh, but we own

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1 from those entities. There appears to be a gap
2 that's not explained.

3 Now lastly, it's not like the MPAA
4 doesn't have the ability to figure this stuff
5 out. In their contract, you'll recall my
6 questions of Ms. Saunders, there were two things
7 in their contracts with their different agents.

8 Paragraphs eight and nine provided the
9 MPAA with the power to go to their agents or the
10 owners of copyright and demand evidence of it.
11 When I asked Ms. Saunders if that had ever
12 happened, she said no. She it had happened with
13 regard to IPG, and never again, never again
14 Litton, never regarding any of these other
15 entities. So they had the ability, but they
16 didn't use it.

17 The other thing that was interesting
18 in there was paragraph ten, which gave the MPAA a
19 post-termination right to collect. It's not
20 exactly the same kind of post-termination right
21 to collect as IPG's, but it is a post-termination
22 right to collect and it is similar.

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1 certain things.

2 They didn't detail that though. They
3 didn't detail the David Letterman Show. Exhibit
4 28, regarding Freewheelin' Films. Freewheelin'
5 Films specifically states that its program,
6 Inside the Ropes at the Open, is its property and
7 it never gave any authority to the MPAA to make
8 collections on it.

9 Exhibit 31 regarding Global Response,
10 Exhibit 32 regarding IWV; that's the declaration
11 by Ms. Millen which you'll recall. Exhibit 33
12 regarding DayStar, and Exhibits 34 and 35
13 regarding Fintage.

14 Now the MPAA has said well, with
15 regard to Fintage, we have these later agreements
16 with TV Azteca and Televisio. They do have those
17 later agreements. However, they don't have --

18 There appears to be a gap in time
19 between when Fintage terminated with what was
20 then IPG, excuse me, when TV Azteca and Televisio
21 terminated with what was then IPG/Fintage, and
22 the agreements that Fintage ultimately procured

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1 So all this bluster by the MPAA about
2 IPG making claims on claimants who have
3 terminated, well, we're doing it for a post-
4 termination -- pursuant to a post-termination
5 right, the MPAA holds the same exact right and
6 could do the same exact thing.

7 Of all of the various points made in
8 the IPG rebuttal, the MPAA comes back with very
9 little really. There's a letter from CBS, Fox,
10 Contract Collections, the PGA Tour and TWI. I'm
11 forgetting the name, but that's the acronym.
12 That's Exhibit -- TWI is 352 regarding Healthy
13 Living, Mysteries of the Mind and a couple of
14 other items.

15 Nothing from ABC Family regarding
16 Beast Wars or DragonBall Z; nothing regarding
17 Whitten, and although there is a letter from CBS
18 as I mentioned, nothing about the Late Show with
19 David Letterman.

20 I now move to the SDC's rebuttal of
21 IPG's devotional programs. IPG, like with the
22 program suppliers category, it's more simple

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1 because -- oh, and also Judge Strickler asked
2 about what percentage of claims or what
3 percentage of claims is the MPAA challenging of
4 IPG's.

5 I don't have that percentage, but I
6 can tell you how many claimants there are in this
7 proceeding in each category. There are 153
8 claimants in the program suppliers category for
9 IPG, and there are 18 devotional claimants. So I
10 don't have -- that gives you the denominator of
11 that percentage. I don't have the numerator.

12 But I would submit that the numerator,
13 if you just generally recall the MPAA's attacks,
14 it's not more ten percent. Now with regard to
15 the SDC, like with the program suppliers
16 category, we have provided contracts and
17 acknowledgments and correspondence.

18 There are only 18 of them. So I think
19 we've got an acknowledgment from all 18, because
20 there wasn't 153. It was 18; it was easier to
21 do. Exhibit 64 attaches the IPG contracts with
22 each of these entities. Exhibit 65 attaches the

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1 Exhibit 79, and finally the copyright
2 registration printout in Exhibit 80.

3 With regard to Creflo Dollar, we have
4 two declarations by Shandra Winiford, that's
5 Exhibit 75 and 76; Benny Hinn, a declaration of
6 Mr. Woodley, that's Exhibit 77. Willie Wilson,
7 we have a declaration at Exhibit 83 and also
8 information from his web page at 85, and also his
9 -- the exemplar of his programming.

10 With regarding Promark -- also on
11 Willie Wilson, since Mr. Brown's original
12 testimony was going to be to challenge Willie
13 Wilson Singstation program as being properly
14 devotional, that I guess has been put by the
15 wayside, because he -- they decided not to go
16 ahead and use him.

17 One thing I pointed out Singstation, I
18 forgot to mention, Singstation is also claimed by
19 the MPAA as being through a network broadcaster.
20 In his declaration in Exhibit 83, Mr. Wilson
21 makes clear that has never been the case.

22 He's never been broadcast on a

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1 acknowledgments, and Exhibits 66 and 67 attach
2 correspondence with these entities, which I think
3 those things together will establish, without a
4 doubt, that IPG has the right to represent these
5 particular entities.

6 Now SDC makes the attack that those --
7 the IPG claimants don't have the right to the
8 individual programs. In many respects, we saw
9 most of these argumentation in the 1999
10 proceeding. However, we're certainly addressing
11 it here as well, and we have about 12 different
12 declarations addressing each of these.

13 Exhibit 51 from Mr. Judd regarding
14 Adventist; Exhibit 69 from Envoy; Exhibit 70 from
15 Ms. Miller regarding IWV; Exhibit 72 regarding
16 Salem Baptist Church from Ms. Abney; Exhibit 73,
17 a letter from Billy Graham Association; Exhibit
18 74 from Jan Harbour regarding Kenneth Copeland
19 Ministries; and also Exhibit 81, which is a
20 transcript of her deposition. You also have the
21 transcript in full in the SDC exhibits;
22 website information on Kenneth Copeland in

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1 network. He's been broadcast on WGN, not CBS,
2 NBC or ABC, and he's never given authority to the
3 MPAA to collect money on his behalf for his
4 program, and there's no response to that from the
5 MPAA whatsoever.

6 Back to my laundry list, though, on
7 the devotional claims. Exhibit 88 is a
8 declaration from Mr. Levine regarding Promark.
9 Exhibit 87, Jack Van Impe from Mr. Vancil, and
10 Exhibit 88 regarding Real Media from Mr. Moore.
11 JUDGE STRICKLER: Question for you
12 counsel with regard to Willie Wilson and the
13 exemplar.

14 MR. BOYDSTON: Yes.

15 JUDGE STRICKLER: It's my
16 understanding that IPG's representation is that
17 the exemplar is a video tape that contains
18 excerpts of different portions of actually aired
19 programs?

20 MR. BOYDSTON: That's correct, and
21 they cobbled them together to make a DVD to sell.
22 Now that DVD and all the material on it, was

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1 never broadcast all at once like that. That is
2 true, and that's what the other parties have
3 said.

4 However, its components are things
5 that were broadcast, and when you watch it, it's
6 self-evident.

7 JUDGE STRICKLER: So the exemplars are
8 nested within the video tape; is that your point?

9 MR. BOYDSTON: Exactly, and there's
10 about ten, I think.

11 JUDGE STRICKLER: Ten?

12 MR. BOYDSTON: Different things that
13 were broadcast.

14 JUDGE FEDER: Apart from your
15 statement that it's self-evident, is there any
16 evidence in the record to support that?

17 MR. BOYDSTON: That --

18 JUDGE FEDER: That it's drawn from
19 broadcast programs?

20 MR. BOYDSTON: I don't think there is.
21 I don't think there is. I was trying to remember
22 whether or not Mr. Wilson addressed that in his

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1 I think they might be there, but I
2 have not done that one to one switch or search.
3 It may be there.

4 With regard to the SDC challenges, our
5 claims on the grounds that we did not provide
6 full legal names, I'd submit that what were
7 provided were legal names. Sometimes they were
8 DVA. That is still a legal name.

9 More importantly though, the SDC has
10 demonstrated not one iota of prejudice from that,
11 for the manner in which the names were put down.

12 In addition to that, you'll recall
13 that the infamous Mr. Joe letter from 2005, which
14 has been admitted as Exhibit 611, attached to
15 Exhibit 611, in that email, all these -- many of
16 these parties are discussed using those same
17 names back in 2005, and it was addressed and cc'd
18 to counsel for the SDC.

19 So it's not like counsel for the SDC
20 was ever running around saying gee, who is Creflo
21 Dollar? Gee, who's Benny Hinn. They have known
22 very clearly since 2005, if not before, putting

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1 declaration. I don't believe he did, but I'll
2 simply represent to you that when ordered to
3 provide exemplars, I communicated with Willie,
4 well actually I communicated with Willie Wilson's
5 enterprise and said we need an exemplar.

6 They sent me this in response to that
7 request, and then I dutifully passed it on. In
8 that respect, maybe one can say all right, they
9 provided it in response, direct response to me.
10 Not for just any old thing, but for an exemplar,
11 and this is what they said they had.

12 JUDGE FEDER: Did the Internet pages
13 that were -- I think that we accepted them in
14 evidence. Do the Internet pages say that these
15 were -- that the videotape has excerpts of TV
16 shows in it?

17 MR. BOYDSTON: They may, and the other
18 thing that I would do with more time is look at
19 that and see if the titles match with the titles
20 that are on -- there's about ten titles that are
21 on the back of the DVD. They're also announced
22 in the short run proceeding itself.

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1 the exclamation point on it. No prejudice here
2 whatsoever.

3 With regard to categorization very
4 quickly, Exhibit 90 and Exhibit 91 are from the
5 SDC's materials, and they describe SDC
6 programming, which by its description does not
7 have particularly primarily religious in theme
8 either, and yet is proffered by them as being
9 devotional programming.

10 That would be Exhibit 91. Exhibit 90
11 is a later version of that that was changed, to
12 make it look more religious. I would submit that
13 if you compare those, it's pretty clearly what
14 was going on. In Exhibit 91, and the first show
15 that you'll see on Exhibit 90 is Herman and
16 Sharon.

17 Read that description, then read the
18 original description in '91 for Herman and
19 Sharon, and you'll see that the original one
20 wasn't very religious at all, but the subsequent
21 one did.

22 With regard -- I think I may be close

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1 to out of time. I still have a few more
2 comments, but before I forget, I would ask the
3 Judges to allow for some sort of post-hearing
4 submissions, simply because these things are
5 complicated, and they are -- it seems to me that
6 it could be very easy to overlook certain pieces
7 of information or evidence, which is why IPG
8 would welcome the ability to submit some sort of
9 post-hearing information.

10 For instance, and I'm not necessarily
11 elevating any one thing over another. But we
12 created this document which I brought yesterday,
13 in response to Judge Strickler's questions, about
14 some sort of detail of what IPG attacked and what
15 the MPAA had responded to.

16 This is something that if we were
17 allowed to we would submit, and you could look at
18 it, and it would be an aid to making that
19 determination. Now the MPAA might -- would have
20 also an opportunity, I suppose, to say well, we
21 think it's full of malarkey or whatever the case
22 may be. But things like that are what we would

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1 implied by Judge Strickler's questions, the
2 acknowledgments that IPG solicited and obtained,
3 where it did not have an original contract,
4 confirmed that at the time the claims were made,
5 IPG had the authority.

6 These claimants gave that authority,
7 because they recall that there were such
8 agreements at the time but you lost the paper,
9 and I don't believe that lose the paper, lose the
10 claim would be justice.

11 With regard to claims that were not
12 done in 2000 and 2003, Mr. Olaniran said there's
13 no new evidence. That is simply not the case,
14 and a review of Exhibit 115 and the exhibits
15 referenced therein will confirm that.

16 There are some situations in which we
17 maybe had evidence in our evidence book and our
18 proposed for that prior proceeding, but they
19 never made it in, because we -- they just, they
20 never made it in. Let's leave it at that.

21 At one point, one of the six
22 categories Mr. Olaniran discussed was where there

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1 be submitting if we were able.

2 Now with the little time I have left,
3 I just want to look down comments by Mr.
4 Olaniran. I think I've responded to most of
5 them, but I just want to take a quick look, if I
6 may. Mr. Olaniran attacked Ms. Vernon and Mr.
7 Galaz regarding having personal knowledge.

8 Clearly, the claims prior to their
9 involvement are based upon -- are not based upon
10 just ether. They're based upon filings that are
11 in your records. So yes, perhaps Mr. Galaz was
12 in jail during 2004, and perhaps Ms. Vernon had
13 no participation during that time.

14 But that doesn't mean that there
15 aren't actual claims that were filed at that time
16 period. There were, and they're memorialized not
17 just in IPG's records, but in your records as
18 well. Therefore, I don't think that really has
19 anything, has any impact.

20 With regard to this argument that one
21 has to be authorized to make the claim at the
22 time you make it, as intimated or as perhaps

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1 is only an email and acknowledgments. I submit
2 to you that in the 2000-2003 proceeding, when you
3 knocked out some of our claims, it was because
4 there were only self, what was called self-
5 serving communications by IPG to the claimant.

6 You said that's not enough. We
7 understood. We didn't submit many of those
8 claims where that's all we had. In fact, we
9 didn't submit any of them.

10 We've only submitted claims where we
11 have correspondence back from the claimants,
12 i.e., not just our email to them but back from
13 them to us, providing us with their programming
14 information, and acknowledgments and other items
15 like that.

16 If you look down 115, you'll not see
17 situations in which the only evidence we have are
18 some emails.

19 With regard to attack on -- in
20 Appendix D of the MPAA materials, issues where
21 there's no verification of the claimants' titles,
22 as Mr. Galaz testified as to those, many of them

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1 were situations where the name of the program was
2 essentially the name of the company, and we went
3 down that somewhat briefly. But I think we
4 identified what all those were.

5 With regard to the attack on the 2008
6 satellite claims not being submitted, I've
7 already addressed that. The MPAA also said,
8 though, that it was 53 total programs for which
9 no claim was submitted.

10 Forty-three were the missing pages in
11 the 2008 satellite. Of the others, two -- I
12 believe two of them, the MPAA is correct. We
13 covered that in Mr. Galaz's testimony. The
14 others, though, or excuse me, there's more than
15 that, 14 were correct.

16 Ten because they were within Canadian
17 claims where there's no claim made for satellite
18 and we thought there had been, and then two
19 others, where individual entities also did the
20 same thing. They filed for 2000 cable but not
21 satellite. Then there were two others where
22 there was actually a claim filed, separate and

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1 apart.

2 Devellier Donegan Enterprises, which
3 was Claim No. 136, and Great Plains National
4 Instructional Library, which was Satellite Claim
5 No. 17. Also Global Response for 2000 cable was
6 in IPG Cable Claim No. 562, and Psychic Readers
7 Network for 2000 satellite was in IPG Satellite
8 Claim No. 255.

9 JUDGE BARRETT: Mr. Boydston, you have
10 five minutes.

11 MR. BOYDSTON: Thank you, Your Honor.
12 I think I'm just about done. Thank you. I'll
13 close with the following. At the beginning of
14 his closing statements, at the end of his closing
15 statements I should say, Mr. Olaniran talked
16 about "blatantly fraudulent conduct by IPG when
17 clients terminated."

18 I submit to you there's no evidence
19 here of fraudulent conduct in any way, shape or
20 form. I've discussed the two situations in which
21 there were terminations. I think the first one
22 is pretty clear.

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1 If there's a post-termination right,
2 which is not unique to IPG, MPAA has it as well
3 on its agreements at paragraph ten, any entity
4 with a post-termination right, by contract,
5 should be allowed to exercise that right.

6 Not only is it in the contract; it's
7 also fair, if you think about it. Think about
8 the contractor example that was brought by Mr.
9 Olaniran. If I sign a contract with a contractor
10 saying we're going to go in three phases, and
11 once I pay you for Phase 1, you are going to do
12 all the work for Phase 1.

13 And then Phase 1 begins; he's bought
14 materials; he's hired workers, he's hired
15 subcontractors, he's made down payments to
16 subcontractors, and all of the sudden I want to
17 jump off in midstream.

18 If the contract doesn't allow me to do
19 that, then the contract doesn't allow me to do
20 that. And not only that, it's not fair. It's
21 not fair for the contractor, who's already done
22 work, laid out money for materials and things

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1 like that, to suddenly pull the rug out from
2 under them.

3 By the same token, it's not fair when
4 someone has a contractual post-termination right,
5 when they've made the claims, they've done the
6 work to buy data for -- this data's expensive,
7 \$150,000 per proceeding oftentimes, they have a
8 right, if they're provided by contract or law, to
9 not simply have the rug pulled out from under
10 them.

11 IPG and any other party in that
12 situation has the right to collect. That's not
13 fraud. That's exercising your contractual
14 rights. Now in the other instances with Bob Ross
15 and with Urban Latino and situations like that,
16 if someone is terminated --

17 Well, let me talk about Urban Latino
18 and those who terminated, but IPG had no
19 indication of it. If you don't have any
20 indication of termination, you can't very well
21 act on it.

22 That's what happened in those

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1 situations, compounded by the fact that those
2 parties, some of them signed acknowledgments and
3 cooperated by providing information to IPG to
4 make claims on post-termination agreements.

5 It's only again in this proceeding
6 that those termination notices have been provided
7 to IPG. So IPG's conduct there, I don't think,
8 can be called into question. Bob Ross admittedly
9 is a more complicated situation, but there again,
10 IPG did not have all the information.

11 IPG was not aware that there was not
12 an ongoing obligation, and that awareness was
13 compounded or was added to by the fact that it
14 kept making these claims, sent five checks
15 totaling almost \$50,000 over ten years to Bob
16 Ross, Inc., without Bob Ross, Inc. ever saying
17 what are you doing? You have no right to do
18 this.

19 Then when Bob Ross said what are you
20 doing, you don't have any right to do this, IPG
21 said okay, fine. Can you give us the
22 documentation so we understand who has what

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1 rights here?

2 Then because there was this confusion
3 about All Global Media, and whether or not Bob
4 Ross really had its rights protected by All
5 Global Media for 2012 and 2013, IPG made those
6 claims.

7 No collection has been made on them,
8 and at this point, those will probably be
9 dismissed by virtue of no intent to participate
10 being filed. But until this proceeding, until we
11 got the exhibits with the actual documentation in
12 them in this proceeding last month, IPG didn't
13 know any of that.

14 So it acted prudently in preserving
15 the claim, in case there really was a claim
16 there. We didn't want Bob Ross to come back to
17 us and say well wait a minute. We thought All
18 Global Media had protected us. Now All Global
19 Media hasn't done anything, now IPG hasn't done
20 anything and we get nothing for 2012-2013.

21 We didn't want to -- IPG didn't want
22 to have to be answering that question, and that's

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1 why it acted in the manner in which it did.
2 Thank you again for your attention, and hope
3 everyone has a nice holiday season.

4 JUDGE STRICKLER: Thank you.

5 JUDGE BARRETT: Mr. MacLean, what's
6 your time frame?

7 MR. MACLEAN: Well, more than ten
8 minutes probably. It's hard to estimate, Your
9 Honor.

10 JUDGE BARRETT: Under an hour?

11 MR. MACLEAN: Well, it has to be,
12 because I only have seven minutes.

13 (Laughter.)

14 JUDGE BARRETT: Yeah, but we have
15 Judge Strickler.

16 MR. MACLEAN: I'll keep it under 57
17 minutes, Your Honor.

18 (Off mic comments.)

19 JUDGE BARRETT: What's the consensus?
20 Should we go straight through?

21 MR. MACLEAN: Your Honor, I can start
22 and stop. I can go straight through, or we can

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1 break early. It's up to you.

2 MR. BOYDSTON: It's my strong
3 preference that you push through.

4 MR. MACLEAN: Let's do that. Mr.
5 MacLean. Well, let me ask the court reporter.
6 It really rests on you. Can you go another 50
7 minutes? All right, then we're good.

8 MR. MACLEAN: Would it be possible to
9 take a five minute break?

10 JUDGE BARRETT: We can take a five
11 minute break right now.

12 MR. MACLEAN: Thank you.

13 (Whereupon, the above-entitled matter
14 went off the record at 11:51 a.m. and resumed at
15 12:11 p.m.)

16 JUDGE BARRETT: Please be seated.
17 That was a rather long five minutes, but -- Mr.
18 Maclean?

19 MR. MACLEAN: Thank you, Your Honor.

20 JUDGE BARRETT: Just so the record is
21 clear, during the break, we did ask the clerk to
22 clarify the status of one exhibit, Exhibit 615.

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1 She had it not admitted, I had it admitted.
 2 Apparently it was not objected to and it was
 3 admitted, so it's marked now as an admitted
 4 exhibit.

5 615 is a declaration of Mr. MacLean.
 6 Okay, Mr. MacLean?

7 MR. MACLEAN: Thank you, Your Honor.
 8 Your Honor, we have a very serious
 9 problem here, and by "we," I mean the Judges, the
 10 participants in these proceedings, the counsel
 11 involved, the entire system, because this system
 12 is not designed to root out fraud on a case-by-
 13 case, claimant-by-claimant, incident-by-incident
 14 basis.

15 This is a system that is built on
 16 trust, and it depends on trust to work properly.
 17 You don't have to take my word for this. I am
 18 going to read here from a letter that's attached
 19 to SDC Exhibit 628 -- SDC P005 attached to 628,
 20 which is a letter from Marybeth Peters dated
 21 September 13, 2002, Marybeth Peters being the
 22 former Register of Copyrights. This was a letter

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1 not totally eliminates the possibility of
 2 settlement."

3 Now think about this for a moment. We
 4 are required as part of these proceedings by the
 5 Judges' regulations to participate in settlement
 6 conferences, and that's really critical to this
 7 system.

8 There are thousands of claimants out
 9 there. We can't have a contested proceeding for
 10 every single one. We must have a system in which
 11 claimants are urged and encouraged to settle with
 12 each other because there simply isn't the time or
 13 the money in the world that it would take to
 14 litigate every single individual claimant, all
 15 the way down the line.

16 That's why we also need a system where
 17 we have honest agents who can -- like MPAA, like
 18 Sports has -- the SDC is a different situation
 19 because we're not agents, we're actually the
 20 actual claimants -- but honest people involved in
 21 this process who can collect the claimants into
 22 groups to present the claims because otherwise

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1 written to the court sentencing Mr. Galaz for his
 2 fraud involving Tracee Productions.

3 "The current filing system is founded
 4 on trust -- trust that the copyright owners and
 5 the agents filing claims are providing the Office
 6 with truthful information and are authorized to
 7 file such claims.

8 Thus, in order to ensure that
 9 copyright owners with legitimate claims are
 10 rightfully compensated, the system depends upon
 11 the honesty of those filing claims. Raul Galaz
 12 has broken that trust, and his criminal actions
 13 constitute an attack on the integrity of the
 14 entire royalty fee distribution process created
 15 by Congress.

16 This attack on the copyright
 17 distribution system has real consequences for the
 18 participants, the copyright owners, and people
 19 with legitimate rights involved, and also for the
 20 Board and for the United States Government."

21 As, again, Marybeth Peters says, "The
 22 filing of false claims significantly decreases if

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1 we'll just never get through it, and the purpose
 2 of the copyright royalty system which is to
 3 reduce the costs involved, the transactional
 4 costs that would be involved in making individual
 5 agreements with every single copyright owner,
 6 that those transactional costs can be reduced and
 7 allow the copyright owners to be compensated.

8 We depend on settlement. How do we
 9 settle with somebody that we cannot be confident
 10 represents the owners? If we reach a settlement
 11 with IPG, how do we know that All Global Media
 12 isn't going to be coming right behind, saying oh,
 13 well you settled with them, now you've got to pay
 14 me?

15 How do we know that the individual
 16 claimants that IPG doesn't represent aren't going
 17 to come behind, the Bob Rosses of the world, and
 18 say, you settled with IPG who wasn't authorized
 19 to act on my behalf. We can't settle with an
 20 entity like this, with a history and practice and
 21 ongoing practice of fraud like this. That's an
 22 attack on the system.

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1 The end result, and I am reading now
2 from Ms. Peters's letter again, the end result is
3 that Mr. Galaz's deceit increased the costs of
4 the CARP proceedings because of the time the CARP
5 spent determining the validity of Mr. Galaz's
6 claims. Consequently, legitimate copyright
7 owners have suffered a significant delay in
8 receiving their royalties, and the royalties they
9 ultimately receive will be reduced by the cost of
10 that proceeding.

11 And it's not just the cost of the
12 proceedings to the Board and the Copyright
13 Office, it's the cost of these proceedings to the
14 participants. Again, the whole purpose of this
15 system is to reduce the transactional costs and
16 allow copyright owners to get their costs.

17 What we're doing out here, just as
18 what you are doing yourselves, is very hard work,
19 and we are straining at the limit of our
20 resources to try to pull on every thread and root
21 out the fraud that we are able to find. Fraud by
22 its nature is hidden. It is not easy to find it.

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1 And this system is particularly poorly
2 equipped to deal with it on a case-by-case basis.
3 We have a presumption of validity of claims.
4 Think about that for a second. How many courts
5 or agencies are there out there where you can
6 walk in, say give me money, and be presumed to be
7 entitled to get it? That is an invitation to
8 fraud.

9 We have very limited discovery in
10 these proceedings. We have almost free admission
11 of declarations, including many that are quite
12 conclusory in nature. We have no subpoena power.
13 That is a crippling, crippling limitation on our
14 ability to root out fraud in every situation
15 where it exists. And most to the point, we have
16 the continued participation of a convicted felon
17 who was convicted of defrauding proceedings
18 exactly like these.

19 The only way that this system can
20 continue to work based on trust is by finding
21 those who attack that system of trust and weed
22 them out. This Board must send a strong message,

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1 not only to IPG, but to all the would-be Raul
2 Galazs and IPGs of the world that we're not going
3 to countenance that. That if you want to
4 participate in this system, you must act within
5 the system, and if you attack the system, attack
6 the integrity of the system, you will not be a
7 participant.

8 JUDGE STRICKLER: If we were to find
9 merit in that argument, counsel, with regard to
10 those claims years that are still in the
11 pipeline, how do we protect those innocent
12 claimants who are represented by IPG?

13 MR. MACLEAN: Your Honor, I would.
14 submit that the purpose of doing this is to
15 protect those innocent claimants and others --

16 JUDGE STRICKLER: How would they be
17 protected?

18 MR. MACLEAN: Well, Your Honor, let me
19 answer that in two parts.

20 First, let me read what Marybeth
21 Peters said about that very issue, because Ms.
22 Peters requested in Mr. Galaz's sentencing

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1 hearing that he be banned. And so I'm reading
2 now from page 3 of Ms. Peters's letter:

3 "The Office also requests that the
4 Court ban Mr. Galaz, or any entity in which he
5 has an interest, from filing with the Office
6 future cable or satellite claims and from
7 pursuing claims which he or such entities have
8 already filed."

9 JUDGE FEDER: And the Court didn't do
10 that, did it?

11 MR. MACLEAN: The Court didn't do
12 that. And this -- and the Judges here referred
13 to that fact, the fact that the Court didn't do
14 that, as part of its determination last time
15 around, in the 1999 proceedings, that further
16 sanctions are not necessary. But the Judges also
17 said that if there is further evidence of
18 misconduct, they won't hesitate to act, and I
19 urge you not to hesitate to act now.

20 JUDGE STRICKLER: Correct me if I'm
21 wrong, maybe my memory is failing me, but wasn't
22 one of the reasons why the Court declined to

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1 impose that penalty, that is to not allow IPG to
2 continue to represent claimants who were still in
3 the pipeline for past years, was because of Mr.
4 Galaz's statement on the record that, well, if
5 there's going to be any problem, if there's going
6 to be any fraud, there's people like you and your
7 firm and your client and MPAA and its counsel who
8 would make sure that that fraud was discovered,
9 and therefore there's no need to disqualify?
10 Wasn't that one of the arguments against that?

11 MR. MACLEAN: That is precisely the
12 argument Mr. Galaz made.

13 JUDGE STRICKLER: Right. And if I
14 understand now, your point is there's some --
15 help me if I'm mischaracterizing -- there's some
16 truth to that, but now you can see that the
17 system is straining, and while that may have
18 sounded good on the surface, the reality is that
19 it's quite expensive and inefficient and maybe
20 only scratching the surface to try to do it in
21 that way.

22 MR. MACLEAN: It is only scratching

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1 practice of those that appear before it, just
2 like any court or board has.

3 And I would submit to you, Your Honor,
4 that in your 1999 decision where you addressed
5 this very question and went through in detail the
6 precedents in support of this, it seemed to me
7 you came within half an inch of concluding that
8 you do in fact have this authority. You
9 certainly didn't conclude that you don't have it.

10 But I would submit, Your Honor, that
11 this is -- that the inherent authority of the
12 tribunal is an authority that you exercise every
13 day. We are just asking for -- when you set
14 scheduling orders, when you direct us how to
15 submit exhibits, all those sorts of things, that
16 is -- those are exercises of the Board's inherent
17 authority. There is no statute that says you
18 have the authority to do these things.

19 But because you are on a Board and
20 because you are judges by statute, you have the
21 authority to govern the participants before you.
22 And IPG is -- although not an attorney, has some

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1 the surface --

2 JUDGE STRICKLER: Well we don't know
3 that because that's the very nature of scratching
4 the surface, is you don't know what's below.

5 MR. MACLEAN: Well, I suppose that
6 that's -- we know that we don't know what's
7 below, how about that?

8 JUDGE BARRETT: It's the unknown
9 unknown.

10 MR. MACLEAN: There are known unknowns
11 and there are unknown unknowns, and --

12 JUDGE STRICKLER: Yes, and every cat
13 is either dead or alive.

14 JUDGE BARRETT: May I ask, Mr.
15 MacLean, on that topic, by what authority you
16 think this Board could take the kind of action
17 you're recommending, which is akin to a debarment
18 or a prohibition?

19 MR. MACLEAN: It is a debarment. We
20 are requesting a debarment. And the Judges have
21 the inherent authority, the Board has the
22 inherent authority to govern and regulate the

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1 of the characteristics that we typically would
2 see in a case represented by an attorney. It is
3 not the holder of the rights in its own name. It
4 represents others who hold the rights.

5 Now IPG said we have contract rights.
6 The purpose of this Board is not to protect IPG's
7 contract rights. IPG can go to a civil court if
8 it wants to protect its contract rights. The
9 purpose of this Board is to protect the rights of
10 the copyright holders.

11 JUDGE STRICKLER: But that gets to my
12 question, and I don't know that you really
13 answered it yet, which is that those contract
14 rights that IPG has work, to the extent they are
15 legitimate, work for the mutual benefit of IPG
16 and its underlying innocent claimants, separate
17 and apart from the ones that you are contesting
18 here today.

19 Were we to -- and so I repeat my
20 question, I suppose -- were we to acknowledge
21 that there was some relief that was appropriate
22 in that regard, how if at all would we balance

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1 the rights of those innocent claimants who are
2 still in the pipeline awaiting royalties whose
3 claims are being represented by IPG?

4 MR. MACLEAN: And here, Your Honor, I
5 was in the middle of reading what Ms. Peters
6 wrote about this, and I'll continue reading:

7 "Such a ban would not infringe Mr.
8 Galaz's rights, as he is not a copyright owner
9 and merely acts as an agent for those copyright
10 owners who have a valid claim. Nor would the
11 rights of those copyright owners represented by
12 him be compromised. Those copyright owners could
13 either file or pursue their claims themselves or
14 could seek new agents to file or pursue claims on
15 their behalf."

16 This is no different than if you had
17 an attorney who was disbarred in the middle of a
18 proceeding. There is going to be some
19 administrative difficulty involved. There might
20 have to be delays or extensions, there might be
21 various procedural things that have to be done,
22 but the client gets a new attorney.

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1 JUDGE STRICKLER: So you're saying the
2 client could amend its claim -- your argument is
3 if we were to go along with this debarment-type
4 remedy, a client who is still awaiting -- a
5 claimant who is still awaiting royalties for a
6 year, for a past year, could amend the claim to
7 say we want the SDC to represent us, we want
8 MPAA, we want Joint Sports Claimants to represent
9 us and that our regulations as they now exist
10 would allow for that amended claim?

11 MR. MACLEAN: Well, I don't -- the
12 claim filed on their behalf, on the claimants
13 behalf, if it's a valid claim, it's a valid
14 claim. The claimant has a claim.

15 Now the claimants, if IPG were
16 debarred, then they could continue pursuing the
17 claim, just as the Judges here ruled with respect
18 to Billy Graham in the 2000 to 2003 proceeding.

19 When there was evidence that Billy
20 Graham had terminated IPG, but also IPG's
21 protestations to the contrary, the Judges ruled,
22 well, ask Billy Graham. Do you want to continue

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1 being represented by IPG or do you want to be
2 represented by another or on your own? You have
3 the right to choose. You can switch horses
4 midstream.

5 The -- now, like I said, they might
6 still be bound by certain acts that IPG has taken
7 on their behalf, for example, filing a written
8 direct statement, filing rebuttal statements, and
9 so forth. I am not saying that they can re-
10 litigate all that or that they could -- or
11 necessarily that they could put something in, but
12 that would be something for the Judges to decide.
13 If that situation arose where, say, IPG claimants
14 wanted to file something new, well, they would
15 have to ask permission just like any of us would
16 have to ask permission, and then we could
17 litigate that and the Judges could decide whether
18 or not permission would be granted.

19 JUDGE STRICKLER: Mr. MacLean, you
20 likened this to a situation where debarment would
21 be appropriate. Debarment generally throughout
22 the federal government is governed by

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1 regulations, and as part of the Library of
2 Congress, we are subject to the Library of
3 Congress regulations. And there are specific
4 regulations governing debarment in the Library of
5 Congress. How would those govern in this
6 situation?

7 MR. MACLEAN: Your Honor, most
8 agencies, I would expect, have regulations for
9 for example debarring contractors. IPG is not a
10 contractor of the agency. I am not aware of a
11 Copyright Office regulation that addresses this
12 situation, which is where we have a Board
13 established by statute, Board of Judges
14 established by statute, in which both the
15 regulations and practice over a course of decades
16 involves the representation of the actual
17 interest holders, the copyright holders, by
18 agents.

19 And so I am just not aware of a
20 regulation that governs it. But the absence of a
21 regulation doesn't mean you don't have the
22 authority. On the contrary, I believe the case

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1 law is clear, and we've cited it and you've cited
2 it, in the 1999 case, that governing the parties
3 before you and the participants before you is an
4 inherent authority, and that includes, when
5 necessary, debarment, disbarment,
6 disqualification of those agents.

7 JUDGE STRICKLER: Let me shift gears
8 on this topic, still within this topic though.
9 If IPG were not in the case, as best as I
10 understand these proceedings over the last
11 several years and going back even beyond that,
12 you have MPAA representing program suppliers, you
13 have the SDC representing the Devotional
14 Claimants -- does IPG inject some level of
15 competition here with regard to the rates that it
16 charges to claimants as a percentage compared to
17 -- and maybe there's no evidence here, you know,
18 you really can't discuss it at all, but you're
19 eliminating potential competition separate and
20 apart from all the issues of fraud. If it's a
21 fraudulent competitor, well maybe that's a much
22 different kettle of fish.

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1 But should we be concerned at all with
2 the fact that IPG is the only competitor seeking
3 to represent program suppliers or Sports
4 Claimants sometimes or Devotional Claimants?

5 MR. MACLEAN: Your Honor, I can't
6 speak to MPAA, but with respect to the Settling
7 Devotional Claimants, like I said, we are not an
8 agent. We don't have a commission. We -- Mr.
9 Harrington is the lead counsel for the Settling
10 Devotional Claimant, each of whom filed their own
11 claims, and who proceed together, but there is no
12 commission. We are paid our hourly rate just
13 like any other attorney.

14 Believe me, my interest, if I had a
15 personal financial interest in this case, would
16 be for it to continue going on the way it's been
17 going. My clients' interests, that is, the
18 Settling Devotional Claimants, is to have an
19 efficient proceeding that leads to a result that
20 reduces transaction costs and to pay me less.
21 That's my clients' interest in this case and Mr.
22 Harrington's clients' interest in this case.

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1 The Settling Devotional Claimants is
2 not an entity. We are a plural. Each of them
3 individually filed their own claims.

4 JUDGE STRICKLER: Thank you.

5 MR. MACLEAN: Your Honor, in further
6 answer to Judge Strickler's question, what can
7 you do? Actually, Mr. Boydston stole a little
8 bit of my thunder on this, possibly by accident,
9 I am not sure, but I was going to cite too the
10 case NBC v. Copyright Royalty Tribunal, 848 F.2d
11 1289, D.C. Circuit, 1988, in which the D.C.
12 Circuit held, "The Board's job here is not to
13 interpret contracts. The Board's job is to
14 determine who is a proper distributee of the
15 funds."

16 IPG doesn't have a copyright right,
17 under the act, to the funds. Any rights it has
18 are as a result of its contracts, if any, with
19 its individual claimants. This Board could,
20 applying its authority as established in NBC v.
21 CRT, order that the funds be distributed directly
22 to IPG's claimants. They can pay IPG's

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1 commission if that's what their contracts
2 require, and if they don't, IPG has a remedy, and
3 that remedy is in the civil courts.

4 JUDGE STRICKLER: So you don't endorse
5 Mr. Boydston's proposal that we just give the
6 money to IPG and let them pay it out?

7 MR. MACLEAN: Your Honor, after the
8 evidence that you've heard in this case this
9 week, I don't think anybody in the room can
10 imagine an order to give IPG funds for its
11 claimants. Those funds don't reach the
12 claimants. Those funds, they take their
13 commission, they take their costs on top of the
14 commission except they don't account for their
15 costs, they just charge more commission.

16 JUDGE STRICKLER: I didn't think we
17 were going to get a stipulation on that.

18 MR. MACLEAN: Well, it was Mr. Galaz's
19 testimony.

20 JUDGE STRICKLER: No, I mean about
21 letting them have the money and then just --

22 MR. MACLEAN: No.

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1 JUDGE STRICKLER: -- going away.

2 MR. MACLEAN: No, I mean Mr. Boydston
3 said there are two options. I think,
4 realistically, there is only one, and that is the
5 money needs to go to the claimants. That is
6 where it belongs -- the legitimate claimants, the
7 authorized claimants.

8 Like I said, this Board's job isn't to
9 protect IPG's contract rights. It is to protect
10 the copyrights, to protect the copyright holder's
11 rights to distribution. We have a whole,
12 actually many whole civil court systems out there
13 that can protect IPG's contract rights.

14 By the same token, we're not asking
15 for punishment here. That's also for the civil
16 courts, the criminal courts, to decide, if it
17 ever gets there. That's not what we're asking
18 here. We're asking for protection, and we're not
19 asking for anything draconian, we're asking for
20 something narrowly tailored to this particular
21 situation where we have a claimant that year
22 after year after year submits false claims.

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1 They admit they file false claims.
2 They file false claims because it's easier not to
3 pursue a claim, a false claim, than it is to
4 withdraw it. This is the IPG version of it's
5 easier to ask forgiveness than it is to ask
6 permission, only the difference is, they don't
7 ask forgiveness. They don't take responsibility.

8 When Mr. Galaz was on the stand, and
9 I even asked him if he took responsibility for
10 the damage he's done to the Copyright Office, no,
11 he doesn't take responsibility for that. He
12 gives lip service to taking responsibility.

13 This isn't just a matter of IPG, I
14 mean of Raul Galaz, either. It's IPG filing
15 these false claims, and Mr. Galaz's sister, and
16 literally his rubber stamp, has no more
17 credibility than he does.

18 When -- and by the way, that leads me
19 into what I think was probably the strangest lie
20 told in these proceedings, when Ms. Vernon was on
21 the stand and Chief Judge Barrett asked her do
22 you have a rubber stamp or another way of

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1 duplicating your signature? She panicked. They
2 didn't have their stories straight. Her instinct
3 was to lie.

4 This is not a responsible entity. The
5 Judges here, along with the Register of
6 Copyrights and the Librarian, are responsible for
7 administering, in this case alone, in these
8 proceedings alone between the devotional program
9 suppliers category, something in the neighborhood
10 of two-thirds of a billion dollars.

11 If you include sports and the other
12 categories, and if you include more years than
13 we're dealing with in this proceeding, it's far,
14 far more than that.

15 JUDGE STRICKLER: Counsel, why doesn't
16 the elimination of the presumption of validity,
17 as we've used in the last two determinations or
18 discussed in the last two determinations, why
19 doesn't that ameliorate the problems that you're
20 talking about, separate and apart from the need
21 still to engage in litigation and the litigation
22 costs?

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1 MR. MACLEAN: Because we can't -- we
2 don't have the power, (a) we don't have the
3 resources, (b) we don't have the legal authority
4 to chase down every single thread to its
5 conclusion. All -- when we're in a situation
6 where all, the only information we can get is
7 what we can find publicly available or what IPG
8 provides to us.

9 JUDGE STRICKLER: My point is if we
10 decide that based on any given set of facts or
11 particular facts such as in the past we've relied
12 on the false claim with regard to Tracee
13 Productions, if we make a decision that based on
14 the facts that we see, IPG is not entitled to a
15 presumption of validity, that lack of a
16 presumption of validity can go to any number of
17 claims -- why is that not sufficient?

18 Is it because you're saying that it's
19 only limited to those claims that you have in
20 fact, you and the MPAA have in fact identified
21 as, for lack of a better word, sketchy?

22 MR. MACLEAN: Well I would presume, I

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1 would expect and I would ask that the Judges (a),
2 of course, not apply presumption of validity to
3 IPG's claims, I don't see how you could -- and
4 so, and I would ask that that apply to
5 everything. I mean, it should apply to no
6 presumption of validity of IPG's representation
7 of its claims because it admits it filed claims
8 on behalf of claimants it doesn't represent.

9 There should be no presumption of
10 validity that its claimants own the copyrights
11 that it claims to own, because look at Tracee
12 Productions. That was the falsity. They claimed
13 to represent Tracee Productions, which they did.
14 Tracee Productions didn't own the copyright to
15 Garfield and Friends. There should be no
16 presumption there.

17 But even with the taking away of the
18 presumption of validity, which I hope that the
19 Judges will do, it still doesn't solve the
20 problem of IPG falsifying documents. Look at IWV
21 Media which is claimed in this proceeding. They
22 just -- for the 2000 to 2003 proceeding, they

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1 couldn't find the representation agreement? They
2 just drew one up. They submitted it, submitted
3 it as if it were the real thing.

4 It took Mr. Olaniran, on cross-
5 examination, skillfully stumbling into the fact -

6 -
7 (Laughter.)

8 JUDGE STRICKLER: Is that an oxymoron?

9 MR. MACLEAN: -- that, that it wasn't
10 a real agreement, it was fabricated. Now, and
11 remember, when I had Ms. Saunders on the stand
12 and I said, and I asked her if she would do
13 something like that, and did you see her
14 reaction? I mean, she just about jumped out of
15 the chair. She was ready to.

16 JUDGE STRICKLER: That wasn't the
17 first time she reacted now.

18 MR. MACLEAN: She was a strong
19 witness.

20 JUDGE STRICKLER: An animated witness.

21 MR. MACLEAN: Absolutely. She didn't
22 know what I was talking about. She was furious

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1 that I would suggest such a thing. Why? Because
2 it's not something that any responsible company
3 would do, to just fabricate evidence and submit
4 it as if it were the real thing.

5 And IPG thinks it gets credit for this
6 time around saying, well, okay, we made this
7 agreement because it was lost. No. It doesn't
8 get credit for that. It got caught last time.

9 And now it comes with its post hoc
10 explanation. Mr. Galaz says well, she asked me
11 to put this together, okay? Blame my claimant,
12 blame my client, don't blame me.

13 Okay, except you look at the emails,
14 and I'm talking about SDC Exhibit 632, where Mr.
15 Galaz is basically saying you need to sign this
16 agreement or else your claim will be forfeited.
17 This was in 2012 he was saying this, for an
18 agreement dated as of 2002, which by the way is
19 the case for practically all of their agreements.

20 JUDGE STRICKLER: Was it a false
21 statement that if they didn't sign it, the claim
22 would be forfeited?

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1 MR. MACLEAN: It's a false statement
2 to say that she was -- that IWV Media is the one
3 who asked for this when it was actually Mr. Galaz
4 pursuing them, telling them the only way to get
5 money is to sign this agreement.

6 Now I'm not trying to cast aspersions
7 on IWV Media right now. As far as I know, IWV
8 Media expected Mr. Galaz to be honest about it,
9 attach the agreement to a declaration saying we
10 just wrote this, we just put this together
11 because we couldn't find the original.

12 That would have been an honest thing
13 to do, but it's not what he did. He just hands
14 it in and says this is the real agreement. How
15 many other agreements are out there? I mean,
16 they all look exactly like this one. They all
17 have the as of date, none of them have dated
18 signatures. They're certifications of
19 authorization. None of them say we were
20 authorized, IPG was authorized at the time it
21 filed the claim. All it says is you're
22 authorized as our agent today, years later, years

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1 after the filing of the claim.

2 JUDGE FEDER: Is it a very unusual
3 thing to as of date agreements? I mean, is that
4 something from which we should draw an inference
5 that there's been misconduct?

6 MR. MACLEAN: Your Honor, I am not
7 asking you to draw misconduct from the fact that
8 the agreements have -- draw that inference from
9 the fact that the agreements are as of dated.
10 However, (a), I think it is a little bit unusual
11 not to have dated signatures, not to have a date
12 line on the signature.

13 But what we've established in this
14 case is there is at least one fabricated
15 agreement not signed anywhere close to the as of
16 date, signed years later for the purpose of
17 trying to establish a representation that, did it
18 exist or not, who knows?

19 That's fraud, and the way that they
20 have structured their entire system allows them
21 to do that, and I am not saying that 100 percent
22 of their claims are fraudulent -- what I am

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1 have given us the original, and by all
2 appearances, it would have been a perfectly valid
3 agreement, but in fact it wasn't.

4 The Judges -- I also want to get to
5 our individual, our individual challenges as
6 well, but the Judges I think have to be very
7 aware here that there is a huge amount of money
8 and a huge attraction to those who would commit
9 fraud.

10 Raul Galaz is not the only one out
11 there who will take advantage of your trust if
12 you allow them to. We need to send a strong
13 message to let everybody know, take your fraud
14 somewhere else, this isn't the place for it. We
15 don't have the power to root it out on a
16 claimant-by-claimant basis, not where it's so
17 pervasive as it is here.

18 We need to root out the claimant, we
19 need to root out the representative of the
20 claimant who commits these frauds, protect the
21 claimants, root out the fraudulent entity.

22 I would like to address our -- I want

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1 saying is that IPG's system is structured to
2 allow them to commit fraud where and when they
3 choose to do so, and that's part of it.

4 And so in answer to Judge Strickler's
5 question earlier to Mr. Olaniran as to whether
6 there's a percentage, no, I can't put a
7 percentage on it. There's no way to do that
8 because as you've said, we can only scratch the
9 surface.

10 JUDGE STRICKLER: When you obtain
11 documents in discovery from IPG that purport to
12 bear the signatures of claimants, do you receive
13 the originals or do you receive copies?

14 MR. MACLEAN: Oh no, we only receive
15 copies.

16 JUDGE STRICKLER: Have you ever
17 requested originals?

18 MR. MACLEAN: I don't believe we have,
19 no. But in the case of IWV Media, it wouldn't
20 have told us anything.

21 JUDGE STRICKLER: I understand that.

22 MR. MACLEAN: Presumably they would

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1 to answer all of the Judges' questions on this
2 very important issue, and everything I've just
3 said goes both to our request to disqualify IPG
4 and also our request not to apply a presumption
5 of validity to IPG's claims.

6 But to address the particular
7 challenges that have been made here, first of all
8 very quickly I am going to address Billy Graham
9 and Daystar. It doesn't need to be taking us
10 long. Our exhibits are at SDC 630 and 631, which
11 are amended Notes of Withdrawal filed by Billy
12 Graham and Daystar, filed by them directly, not
13 filed by the SDC, which I said is not an entity.

14 As these amended Notes of Withdrawal
15 make clear, Billy Graham and Daystar settled with
16 the SDC, not with IPG. They then became part of
17 the SDC, and that of course is the meaning of the
18 SDC, the Settling Devotional Claimants, all the
19 claimants in the devotional category that have
20 settled with each other as opposed to IPG, which
21 is the only claimant with whom we have not
22 managed to settle.

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1 Particularly in proceedings like
2 these, as I said, settlement should be
3 encouraged, and the intent of the settling
4 parties should be given effect.

5 Moving on now to our claims, our
6 challenges to IPG's claims, we have a claim with
7 respect to the 2008 satellite as to Jack Van
8 Impe, Life Outreach, and Willie Wilson. Plainly,
9 if you look at the claim, at the certified copy
10 of the claim, MPAA Exhibit 302, 20 pages from the
11 end, plainly missing pages.

12 Now IPG claims that its exhibit is
13 correct, that it actually filed the entire thing,
14 and that the Copyright Office or the Copyright
15 Royalty Board have lost the missing pages. In
16 this proceeding, in the several days that we've
17 been here, over and over again we've seen
18 scanning errors, we've seen missing pages in
19 IPG's exhibits, we've seen exhibits in the wrong
20 place, we've seen pages of one exhibit attached
21 to another exhibit.

22 We've seen IPG pass the blame for this

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1 to a pregnant woman in Mr. Boydston's office.
2 And it's all fine, we worked through it, okay,
3 it's -- we were able to figure it out, I'm not
4 trying to make any issue out of this. But is it
5 more likely that the Copyright Office lost these
6 pages in the middle of a document or is it more
7 likely that there was an error on IPG's side?

8 I am going to direct the -- my
9 argument for just a moment to the IPG's 2008
10 cable claim. Now we have, similarly to the
11 satellite claim, to the 2008 satellite claim, we
12 had a challenge based on a missing page, a single
13 missing page, from IPG's 2008 cable claim. We
14 withdrew that challenge. We withdrew that
15 challenge because in IPG's production to us, the
16 claim was missing a page.

17 When we received MPAA's certified
18 copies of the claims, we saw, oh, the certified
19 copy, the Copyright Office's record, is not
20 missing this page. We're not playing games here.

21 JUDGE STRICKLER: Question for you --
22 I am not going to bother to go back to the book

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1 to look now, so maybe you can reference it
2 yourself in terms of an exhibit, but in the 2008
3 satellite claim, and in particular with regard to
4 Willie Wilson, the page that allegedly was
5 missing, either arguably because the Copyright
6 Royalty Board did not have it in its files --
7 those pages were all alphabetized by title,
8 correct?

9 MR. MACLEAN: Yes.

10 JUDGE STRICKLER: And the Willie
11 Wilson page that was missing would have been,
12 obviously, at the end of the alphabet, W. When
13 you compare the 2008 to the other satellite years
14 in this proceeding where the Willie Wilson claim
15 was made, there are a whole host of claims, as I
16 recall, that were for roughly S or T right
17 through W and anything else that might have
18 continued on in the alphabet.

19 All of those were missing from the
20 2008 filing, not just the Willie Wilson, but all
21 of the ones, so you are telling us that we should
22 infer that none of those claims existed with IPG,

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1 through IPG, during those prior years, or do you
2 mean they did exist for IPG during those prior
3 years and they all disappeared in 2008 in
4 alphabetical sequence, and that would be the more
5 appropriate inference for us to take?

6 MR. MACLEAN: No, Your Honor. I think
7 it's plain that IPG left pages out of its filing.
8 It's plain.

9 JUDGE STRICKLER: Oh, so you think the
10 page is there, that they just left it out.

11 MR. MACLEAN: Yes.

12 JUDGE STRICKLER: So that if we went
13 back and took official notice of whatever we
14 find, we'll either find -- so you're saying that
15 --

16 MR. MACLEAN: I am saying that --

17 JUDGE STRICKLER: -- you say they left
18 it out, so there really is a page that has a
19 filing with all those T's, the S's or the T's
20 through Z, and they left it out, and we should
21 infer they left it out because Willie Wilson is
22 not there?

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1 MR. MACLEAN: Your Honor, you should
2 -- I, I mean, you could, I think it would be
3 perfectly permissible for you to infer that they
4 left it out because they made a mistake, and they
5 did. And if I someday, God forbid, make a
6 statutorily required filing that's missing pages
7 and claimants lose their rights as a result of
8 that, I will be very glad I have malpractice
9 insurance, and that will be the remedy.

10 JUDGE STRICKLER: So you say we should
11 infer that they left it out as a mistake, but if
12 we go -- if that's correct, and when we go back
13 to the CRB files we'll find it there if it was a
14 mistake on their part, right? Or are you saying
15 they never filed it to begin with?

16 MR. MACLEAN: I am saying the
17 inference to draw is that they never filed it to
18 begin with.

19 JUDGE STRICKLER: They never filed it
20 by mistake.

21 MR. MACLEAN: They -- by mistake, they
22 never filed it to begin with.

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1 JUDGE STRICKLER: They never filed
2 that last page, S through Z or what have you.

3 MR. MACLEAN: Right. They made a
4 mistake. And, you know, look, if you make a
5 mistake, then there are consequences to it. In
6 this case, they lost the claims for those that
7 they didn't file.

8 Like I said, if I make a mistake in a
9 statutorily required filing, I hope it never
10 happens, but if it does, I will be glad I have
11 malpractice insurance. I hope for the sake of
12 IPG's claimants that they have E&O coverage. But
13 if it turns out that because of Mr. Galaz's
14 history of fraud that they are uninsurable, then
15 that's all the more reason why the claimants and
16 the public need to be protected from IPG's
17 practice in these proceedings.

18 JUDGE STRICKLER: Should we -- never
19 mind, go ahead, I am sorry.

20 MR. MACLEAN: Like I said, with
21 respect to the 2008 cable claim, when we saw
22 MPAA's -- the certified copy that the MPAA

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1 received, we said oh, I see that the page with
2 respect to that claim is actually there. IPG had
3 just left it out of their production.

4 So we said, okay, we'll withdraw the
5 claim because we understand that the Judges and
6 the system is relying on us to present accurate
7 information. And because -- now we could have
8 taken the position, well they produced this
9 document to us in discovery, they are bound by
10 it, just like IPG took that position with respect
11 to MPAA. We didn't. We saw the certified copy,
12 we said we'll withdraw the 2008 cable challenge.

13 But the certified copies of IPG's 2008
14 satellite challenge, satellite claim, are missing
15 the pages. And the inference to draw, especially
16 considering that IPG's own production to us was
17 missing pages, is that IPG lost the pages and
18 therefore didn't make the claim.

19 We have -- we've raised a number of
20 questions about authority, about IPG's authority
21 to represent those claimants. I don't think any
22 understanding can be made of these outside the

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1 context of the testimony that we heard from Bob
2 Ross Inc., from Mr. Walt Kowalski.

3 By the way, I am sure that this was
4 simply an error, but Mr. Boydston said that they
5 only received the mandate agreements the Tuesday
6 before last. The mandate agreements were
7 attached to our rebuttal statement that was filed
8 on October 15, 2014.

9 If there's any question about what
10 IPG's intent was with respect to Bob Ross Inc.,
11 you can look to the fact that they have still, to
12 this very day, not paid Bob Ross Inc. or returned
13 the money to PBS. They kept the money.

14 If there's any question about what
15 IPG's intent is with respect to the claimants
16 that it purports to represent, look only to the
17 fact that in this year, July of 2014, a year and
18 half after Bob Ross Inc. notified them your
19 agreements with us have expired, do not represent
20 us anymore, they file a claim representing them,
21 and still don't return the money to them. And
22 they claim they did this prudently, out of

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20 us anymore, they file a claim representing them,
21 and still don't return the money to them. And
22 they claim they did this prudently, out of

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1 prudence, to protect the interests of Bob Ross
2 Inc.

3 That is the very definition of a
4 placeholder claim, to file a claim without
5 authority in the expectation or in the hope that
6 the claimant eventually will authorize you to
7 represent that claim.

8 We have a challenge. I gave that
9 background, and of course with respect to Bob
10 Ross Inc., what had happened was there were
11 mandate agreements that were for one year each,
12 and then Marian Oshita, on behalf of All Global
13 Media, got a continuing agreement with Bob Ross
14 Inc. That was the testimony, and that's what the
15 documents in evidence show happened.

16 Now, with that background in mind, I
17 am going to go through some of these other, these
18 other entities.

19 IWV Media I've already addressed.
20 They have a fabricated agreement, but it does
21 show some of IPG's approach to this and their
22 placeholder claim approach. When -- in SDC 632,

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1 as I mentioned, Raul Galaz says hey, sign this
2 agreement, this fabricated agreement or you're
3 not going to get your money.

4 That's the way the placeholder claim
5 works. You file the claim without authority,
6 then go to the claimant and say better give me
7 authority or you lose, you lose your money.

8 IPG Exhibit 53 is Mr. Boydston's email
9 with Bob Ross Inc., in which we says pretty much
10 the same thing. Gee, I see you are claiming that
11 you terminated us. There must be some
12 misunderstanding, or can you please provide us
13 with documentation? At any rate, we are going to
14 have to return the money to PBS if there is a
15 question about authority to represent.

16 Well, that's a threat. Now there is
17 some method behind that madness, there is some
18 logic to that threat. It does seem logical that
19 if there's a question of authority that you would
20 return the money to PBS because if there was no
21 authority, then it would be PBS's money. If only
22 they had done that. But they didn't. They

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1 didn't return the money to PBS.

2 But what they were really doing was
3 leveraging the situation to try to get Bob Ross
4 Inc. to confirm authority that never existed in
5 the first place, exactly what they did with IWV
6 Media in SDC 632.

7 Envoy Productions: this is the
8 agreement that's SDC 605, this is the one in
9 which the agreement was signed too late for the
10 2001 year that's referenced in the agreement.
11 IPG's response to this is basically well, it was
12 an accident, it was downloaded from the website,
13 it's -- there's just the wrong year on the
14 agreement.

15 But here's the thing. This is not a
16 scrivener's error in the traditional sense where
17 the parties have reached an agreement and there's
18 just an error in recording the agreement on a
19 piece of paper. This was a piece of paper that
20 was downloaded from a website and had the year on
21 it.

22 How do we know what Envoy Productions

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1 was thinking when they signed that and returned
2 it? Were they intending to do this for 2001, or
3 were they intending to sign for 2002? Not a
4 scrivener's error, it was actually on the
5 document.

6 Now they send these -- and the
7 certificate of representation adds nothing to
8 this because all that says is that IPG is
9 authorized to represent them, not that they were
10 authorized to represent them.

11 Now there is a declaration. I am
12 going to get to that later in more detail.
13 However, these declarations -- how much weight?
14 The Judges have accepted the declarations for
15 whatever they are worth. How much are they worth
16 when IPG is the one drafting them and encouraging
17 its clients to sign them or else lose your money?

18 And then in the background with All
19 Global Media filing claims, how much do these
20 claimants who are signing these declarations
21 about missing agreements really know? Are they
22 remembering signing a continuing agreement with

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1 IPG, or are they remembering signing a continuing
2 agreement with Marian Oshita after she started
3 All Global Media?

4 The Salem Baptist Church claim: they
5 have a mandate agreement here that covers 2001
6 only. IPG claims well, there was a -- there's a
7 missing continuation agreement. And IPG Exhibit
8 72 is the declaration in which Salem Baptist
9 Church makes this assertion.

10 This is the declaration that has
11 language from the IWV Media declaration about the
12 signing of a new agreement, which IPG admits
13 never happened. I mean, this is smoking gun
14 evidence that these declarations are being
15 written by Raul Galaz and not by the claimants.
16 They are just signing.

17 What is the declaration worth? You
18 accepted it for what it's worth. It's not worth
19 very much when we don't have the ability to test
20 this evidence in the courtroom, and that's what
21 we lack when we lack subpoena power. We don't
22 have the ability to root out fraud in every

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1 single individual instance. This one, we were
2 lucky enough that Raul Galaz made a mistake by
3 leaving in some language in that declaration that
4 belonged in another declaration. Take it for
5 what it's worth. Now you know what it's worth.

6 Paradigm Pictures, SDC 608, not
7 executed in time for a 2000 claim. There was no
8 testimony from IPG about that at all.

9 Billy Graham: agreements in 2002 and
10 2003 were not executed by IPG. Mr. Galaz
11 admitted that it wasn't even from IPG's own
12 business records. No evidence whatsoever that
13 IPG ever signed these representation agreements.
14 Mutuality is a requirement for any contract. If
15 the IPG isn't bound, it's not a contract.

16 All of, or not all, but many of IPG's
17 representation agreements reference copyright
18 collection society. Authorized to pursue claims
19 in copyright collection societies throughout the
20 world.

21 Now, in the 2000 to 2003 case, the
22 Judges looked at Exhibit A to IPG's

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1 representation agreements, which does indeed
2 contain language at least implying that that
3 authority before copyright collection societies
4 around the world includes authority with respect
5 to the copyright royalty system here in the
6 United States, the Copyright Royalty Board,
7 despite the fact that the Copyright Royalty Board
8 is not a copyright collection society.

9 However, Exhibit A is missing from
10 IPG's agreements with Kenneth Copeland
11 Ministries, IWV Media, Promark Productions, and
12 Willie Wilson. Now, IPG comes in and says oh,
13 sorry, that was a mistake with respect to IWV
14 Media. It actually had an Exhibit A.

15 But who cares if IWV Media had an
16 Exhibit A? That's the agreement that they
17 fabricated in 2012.

18 Finally, we have a challenge with
19 regard to -- well not finally, but next, we have
20 a challenge with regard to those claimants on
21 whose behalf All Global Media made claims. These
22 are Salem Baptist Church, Willie Wilson

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1 Productions, Jack Van Impe Ministries, Creflo
2 Dollar Ministries, Benny Hinn Ministries, and
3 Eagle Mountain, which is Kenneth Copeland
4 Ministries.

5 With respect to these, you might
6 consider for a moment, for example, Salem Baptist
7 Church's declaration, IPG Exhibit 72. Now in
8 this one, they said well, we can't find the
9 continuation agreement, but Marian Oshita came to
10 us and asked us to sign one.

11 Now she -- now the declaration does
12 say the continuation agreement was for IPG, but
13 it doesn't say when this was done. All it says
14 is it was Marian Oshita.

15 Now, so what happened? Did Marian
16 Oshita come with a continuation agreement for IPG
17 that IPG just never had? Or did she come with a
18 continuing agreement for All Global Media, as she
19 did with Bob Ross Inc.?

20 We don't know. We have no way of
21 knowing because we don't have the ability to
22 examine the witnesses and to get the documents

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1 that we would need to find out. But IPG is not
2 entitled to the benefit of the doubt here. There
3 is enough of a reason to suspect and to infer
4 that Marian Oshita, when she was getting
5 continuation agreements it was for All Global
6 Media and not for IPG.

7 That goes for all of All Global
8 Media's claims. I mean, it's clear what
9 happened. When IPG essentially went through its
10 own period of inner turmoil and broke up and
11 Marian Oshita went her own way, she started
12 contacting IPG's clients.

13 IPG has an argument related to non-
14 competition agreements, it has nothing to do with
15 anything at issue in this proceeding. They can
16 sue Marian Oshita over that if that's what they
17 want to do.

18 And then sure enough, in 2004, Marian
19 Oshita and All Global Media start filing claims.

20 SDC 611 is the declaration of Chip
21 Grange attaching an email from David Joe, David
22 Joe, of course, being a representative for or

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1 MR. MACLEAN: Oh yes, Your Honor. All
2 Global Media's claims are SDC 610.

3 JUDGE FEDER: Thank you.

4 MR. MACLEAN: Those claims are
5 entitled to a presumption of validity. In our
6 view, IPG's are not. So that's evidence.

7 Moreover, and for just a moment here
8 I am going to try to take you all back to your
9 law school days, in every basic evidence class
10 there's a case called Mutual Life Insurance
11 Company v. Hillmon, 145 U.S. 285 (1898), U.S.
12 Supreme Court case, from which the evidentiary
13 principle of the Hillmon doctrine derives.

14 The Hillmon doctrine is the doctrine
15 that allows hearsay evidence to be introduced of
16 a person's intent to perform an action later. In
17 the Hillmon doctrine case itself, the statement
18 was "I am going to Crooked Creek," offered and
19 admitted for the purpose of proving that the
20 person who said it actually did go to Crooked
21 Creek after he said it.

22 That's called the Hillmon doctrine,

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1 purporting to be a representative for Kenneth
2 Copeland Ministries, Benny Hinn Ministries, and
3 Creflo Dollar Ministries.

4 David Joe says that he will do,
5 expects to do, in this email, says in this email
6 that he expects to do what these other claimants
7 were apparently doing, and that is to terminate
8 IPG and proceed with Marian Oshita's new company.
9 He says that is what he is going to do in that.

10 Now IPG's argument is well, yeah, but
11 he never did it. He never pulled the trigger.
12 Therefore we have no obligation to produce this
13 email even though we did request in discovery all
14 of IPG's correspondence with all of its claimants
15 regarding devotional claims. He never pulled the
16 trigger, therefore, we weren't terminated.

17 But All Global Media did file a claim
18 on behalf of those entities which itself is
19 entitled to a presumption of validity. All
20 Global Media's claims are entitled to a
21 presumption of validity.

22 JUDGE FEDER: Is that in the record?

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1 and it stands for the proposition than an
2 inference can be drawn that when a person says he
3 or she is going to do something, that they then
4 proceed to do it.

5 In SDC 611, Mr. Joe says I am going to
6 terminate you in favor of Marian Oshita. SDC 610
7 shows that All Global Media filed a claim on
8 behalf of Creflo Dollar, Benny Hinn Ministries,
9 and Kenneth Copeland Ministries. Altogether, the
10 inference can be drawn that IPG -- that David Joe
11 did what he said he was going to do and
12 terminated IPG.

13 We have claims, we have challenge to
14 ownership of copyrights by IPG's claimants, and
15 again, I'll remind the Judges that Tracee
16 Productions was a valid IPG, an authorized IPG
17 claimant, but that did not own the copyrights it
18 claimed to own. That was the nature of the very
19 fraud for which Mr. Galaz was convicted.

20 With respect to Adventist Media
21 Center, the state of the record in this case is
22 precisely what it was in the 1999 case. SDC 612

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1 is the amendment filed by It Is Written, Inc.
2 attaching an affidavit of Warren Judd explaining
3 that It Is Written, Inc. and not Adventist Media
4 Center owns the copyrights to the work It Is
5 Written.

6 Warren Judd has submitted a
7 declaration. I believe the Judges are still
8 pending as to whether that declaration will be
9 admitted or not, but at any rate, it conflicts
10 with Mr. Judd's own affidavit in SDC 612 which
11 was closer in time to the matters at issue.

12 I continue to believe and submit that
13 Warren Judd in his declaration, if it is
14 considered by the Judges, is hopelessly
15 deceptive, but the Judges need not reach the
16 question because as in the 1999 case, SDC 613 are
17 the copyright registrations confirming what
18 Warren Judd said in his affidavit in SDC 612,
19 that the copyrights were not in Adventist Media
20 Center's name.

21 We have a challenge to Kenneth
22 Copeland Ministries's assertion of its copyright

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1 ownership. This is a complicated one, but this
2 proceeding is a search for the truth. It's not a
3 game to be played by the participants over
4 discovery and deposition procedures. It's a
5 search for the truth, and I submit to you that
6 the truth is not known.

7 We have submitted SDC 614, the Senate
8 Finance Committee report. As I acknowledged when
9 we submitted it, it is not the kind of evidence
10 that I would typically prefer to rely upon, but
11 it is the best that we were able to do. It is
12 the best evidence we were able to find with
13 regard to Kenneth Copeland Ministries's ownership
14 or non-ownership of the works.

15 Pages 21-22 of the report states that
16 Kenneth Copeland himself retains ownership of his
17 works and that Gloria Copeland, Kenneth
18 Copeland's wife, retains ownership of her works
19 of authorship.

20 Now a couple of other points to make
21 about this. Page 8 of SDC 614 establishes that
22 Kenneth Copeland claims no longer to receive a

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1 salary from Eagle Mountain International Church.
2 Here is why that is significant: Kenneth Copeland
3 personally, as you will see in the Senate report,
4 has considerable, considerable wealth. When he
5 says I no longer, I don't receive a salary, that
6 is a manner of public presentation.

7 So where does he get his wealth if
8 he's not receiving a salary? The answer can be
9 found on page 22 of the report, he receives
10 royalties. What is he receiving royalties for?
11 It's a television ministry. He receives -- the
12 inference can be drawn that he receives royalties
13 for the programs.

14 The truth of the matter, the whole
15 truth, is hidden. We, unfortunately, may never
16 know what the employment agreements actually
17 said. We're not able to get them by subpoena.
18 Kenneth Copeland Ministries has chosen not to
19 offer them in any way, shape, or form, instead
20 offering only the mere, unsupported assertion of
21 Jan Harbour that Kenneth Copeland Ministries owns
22 the works.

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1 That, I submit, is not enough to meet
2 IPG's burden of production.

3 JUDGE BARRETT: We've interrupted you
4 quite a bit, but I'm going to give you five
5 minutes to wrap up, Mr. MacLean.

6 MR. MACLEAN: And then I would also
7 ask the Judges to look at page 2 of the Senate
8 report and look at the strong-arm tactics that
9 Kenneth Copeland Ministries uses to keep the
10 truth hidden.

11 Employees are told that God will allow
12 Satan to blight them if they talk, and to shun
13 anybody who speaks out. I know I felt shunned --

14 JUDGE STRICKLER: Is that primarily of
15 a religious theme?

16 MR. MACLEAN: Yes, Your Honor?

17 JUDGE STRICKLER: Is that primarily of
18 a religious theme?

19 MR. MACLEAN: If the Board allows this
20 claim for Kenneth Copeland Ministries, it will be
21 a roadmap for overcoming serious challenges.
22 Simply present a conclusory affidavit. I submit

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1 it is not enough to meet IPG's burden of proof.
 2 We have a challenge to IPG's failure
 3 to use full legal names with respect to Creflo
 4 Dollar and Benny Hinn. There seems to be no
 5 dispute in the case that these are fictitious
 6 names. Benny Hinn itself has a -- is a
 7 registered fictitious name. There is no entity
 8 called Creflo Dollar. The corporate chart shows
 9 an unincorporated association called Creflo
 10 Dollar Ministries though that is not the entity
 11 that IPG is claiming in this case.

12 I refer the Court, the Board, to the
 13 case in the matter of Firth, 363 F. Supp. 369 MD
 14 Georgia 1973, a federal case applying Georgia law
 15 stating that although a d/b/a is sufficient for
 16 the making of a valid contract under Georgia law,
 17 it is insufficient to meet in this case filing
 18 requirements under the UCC because it doesn't
 19 sufficiently apprise the public.

20 In this case, Tracee Productions filed
 21 in 1999 under a fictitious name. The entity
 22 existed, but it used a fictitious name. The

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1 only evidence in the record regarding the correct
 2 characterization of the program Singsation is the
 3 fact that IPG claimed it without challenge in the
 4 program suppliers category in the years 2000 to
 5 2003. There is no other evidence in the record
 6 concerning the content of the program. Everybody
 7 agrees, whatever standard you use, and I would
 8 submit that according to the Board's own
 9 precedent, if a standard is applied it should be
 10 the standard used in the 1999 case, everybody
 11 agrees you have to look at the programs.

12 Mr. Boydston says you know it when you
 13 see it, suggesting devotional programs is
 14 essentially equivalent to pornography.

15 MR. BOYDSTON: Objection, Your Honor.

16 JUDGE BARRETT: Sustained.

17 MR. MACLEAN: Everybody agrees that
 18 you have to look at the program, but you don't
 19 have the program to look at. You have a DVD the
 20 only foundation for which is that it is not a
 21 broadcast program. It is not a collection of
 22 clips from programs. If you watch it, when you

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1 Copyright Office responded by adopting a rule
 2 against the use of fictitious names, and I
 3 believe that the testimony of Bob Ross Inc. shows
 4 the wisdom of having such a rule. That rule
 5 should be enforced, and those claims should be
 6 disqualified.

7 JUDGE FEDER: Mr. MacLean, can you
 8 just very briefly address Mr. Boydston's point
 9 that there was no prejudice to the Settling
 10 Devotional Claimants as a result of using these -
 11 - what he states are well-known fictitious names?

12 MR. MACLEAN: Prejudice is not an
 13 element, Your Honor. There is a certain level of
 14 inherent prejudice in the sense that we need to
 15 know who is really our opponent, but my answer to
 16 the question is that prejudice is not an element,
 17 it's a requirement, a requirement to submit legal
 18 names. They didn't meet the requirement.

19 And again, if I fail to meet a
 20 requirement, I will be glad I have malpractice
 21 insurance.

22 With respect to Willie Wilson, the

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1 watch it, you will see it is all from a single
 2 event. And along those lines, I will simply say
 3 look for the lady in the white hat, all will be
 4 answered.

5 I --

6 JUDGE STRICKLER: Tantalizing.

7 (Laughter.)

8 MR. MACLEAN: Envoy Productions: the
 9 only evidence in the record suggesting that any
 10 other than a single one of their programs is
 11 devotional, they've presented the DVDs, you can
 12 watch the exemplars, there are only eight that
 13 actually match up with program titles claimed in
 14 this proceeding even though IPG has claimed many,
 15 many Envoy programs' titles in this proceeding.

16 There is no evidence of any joint
 17 ownership between Envoy Productions and any other
 18 entity, and Envoy itself is disqualified in these
 19 proceedings for other reasons that we have
 20 already discussed. Agreement is for the wrong
 21 year.

22 At any rate, expert testimony

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1 establishes that only a single Envoy program is
2 devotional. It would therefore be dismissed from
3 the devotional category at any rate.

4 The Judges should dismiss all of these
5 claims. But any -- obviously I want to answer
6 the Judges' questions about any of them
7 individually, but I also want to come back to the
8 principal relief that we're requesting, which is
9 the disqualification of IPG.

10 This Board has cited to a principal
11 before, falsus in uno, falsus in omnibus, false
12 in one, false in all. The Judges have twice
13 declined to apply the full weight of this
14 principle to Mr. Galaz and his company, IPG, and
15 in a way I suppose there's something to be
16 admired in the Judges' restraint and patience and
17 commitment to offer a second bite at the apple.

18 But inaction has real consequences.
19 There is a reason that this maxim is of Latin.
20 It is of great antiquity, and while perhaps not
21 all ideas that have come down from the ancient
22 Romans have survived the test of time, I submit

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1 that this one has. A witness who gives false
2 evidence once will do it again if he believes he
3 can.

4 These proceedings are rife with
5 opportunity for a would-be perjurer to get away
6 with it, and we have few tools to root out that
7 fraud. Consider how unlikely it is that
8 defrauded copyright holders like Bob Ross will
9 come forward while voluntarily. For most of
10 them, it means, claiming IPG lacks authority
11 means abandoning their claims.

12 In the case of Bob Ross, it's only by
13 good luck and very goodwill and sense of civic
14 duty that the truth came out.

15 After the past 15 years of experience,
16 I doubt there is anybody in this room who would
17 believe anything that Mr. Galaz or his company
18 says without independent verification, including
19 the opportunity to test that verification through
20 the crucible of cross-examination.

21 The reason for that can be found in
22 another maxim, one of less antiquity but equally

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1 applicable to this situation: ludificare me
2 semel, te pudet. Ludificare me bis, me pudet.
3 Fool me once, shame on you. Fool me twice, shame
4 on me.

5 JUDGE BARRETT: Thank you, Mr.
6 MacLean.

7 MR. BOYDSTON: Your Honor, some very
8 incendiary things were said. May I have just one
9 minute?

10 JUDGE BARRETT: No, this is closing
11 argument, Mr. Boydston, not evidence, and we will
12 weigh it as such.

13 Let me just ask that as soon as you --
14 as soon as practicable, that each party would
15 submit electronic versions of the exhibits that
16 have been admitted and to the extent we have
17 ruled on redactions, you may redact from what you
18 submit. To the extent we have reserved, go ahead
19 and submit those exhibits, and to the extent
20 we've reserved on redactions, you can mark or not
21 mark, we've got notes on what we've reserved on.

22 And send those to the CRB email

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1 address. Now I don't know if this is just our
2 email system or if it's the universal email
3 system -- sometimes bulky documents will cause
4 emails to balk, so if you could zip those, they
5 should travel through cyberspace as zipped files,
6 and then we can unzip them and get everything we
7 need.

8 If we find that you have submitted
9 anything that does not comport with our records,
10 we will certainly be in touch with everyone, but
11 it makes it a lot easier for us to massage the
12 evidence if we have it all in one place at one
13 time.

14 MR. MACLEAN: Your Honor, is this with
15 respect to all exhibits or just the ones that
16 we've added in?

17 JUDGE FEDER: We haven't discussed
18 this, but I would find it most helpful if what
19 you submitted was your entire exhibit binder
20 including those new exhibits that were offered at
21 the hearing and admitted into evidence, and it
22 would also be helpful for those documents to

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1 conform to the guidelines that we distributed at
2 the beginning of the hearing.

3 MR. BOYDSTON: So you have one set as
4 opposed to multiple?

5 JUDGE FEDER: One set, see --

6 MR. BOYDSTON: Right.

7 JUDGE FEDER: -- because otherwise we
8 have to collate them.

9 MR. BOYDSTON: Right.

10 MS. PLOVNICK: Your Honor, I just --
11 I foresee that this may create a very large
12 email, and so, you know, would you like an FTP
13 download or would you prefer a CD-ROM if we can't
14 get it to go through to the email address? I
15 just -- you know, I am thinking this will be a
16 very big pdf.

17 JUDGE FEDER: If you can't get it to
18 go through to the email address, then put it on a
19 CD-ROM and have it delivered.

20 MS. PLOVNICK: Thank you, Your Honor.

21 JUDGE STRICKLER: Just a rhetorical
22 question, or a question for all of us, do we want

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1 We are at a close. Thank you all.

2 This has been well-organized, well-presented,
3 well-briefed, and we appreciate it very much. We
4 appreciate your continuing patience with us as we
5 work our way through this proceeding.

6 This was a challenge, as you might
7 know, more of a challenge for you than for us,
8 I'm sure, to put together so many fund years in
9 one proceeding, but we have -- this Panel of
10 Judges has a very sincere commitment to try to
11 bring these things into a more current and
12 contemporaneous vein so that we don't have to try
13 to -- you don't have to try to recreate decades-
14 old evidence. We want to try to keep this moving
15 forward.

16 So we just decided to bite the bullet
17 on this one, go for it, and we will try to keep
18 up pace from this point forward.

19 Thank you again. We are adjourned.

20 (Whereupon, the hearing went off the
21 record at 1:24 p.m.)
22

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1 just the exhibits that were admitted or even the
2 ones that were offered but rejected?

3 JUDGE BARRETT: Just the ones that
4 were admitted, thank you.

5 I think we already have electronic
6 versions of everything that you proposed,
7 correct? So all we really want is the admitted
8 ones in a separate file.

9 JUDGE FEDER: Let me just amend that
10 slightly since there are several exhibits that
11 were offered and we had not yet ruled on, include
12 those as well.

13 JUDGE BARRETT: Yes, I said that.

14 JUDGE FEDER: Oh, sorry.

15 MR. MACLEAN: So just to clarify, are
16 we looking at three different submissions or one
17 submission you want? So the parties have to
18 collaborate on this -- ?

19 JUDGE BARRETT: Oh no no, I am sorry.
20 One per party.

21 MR. MACLEAN: Okay.

22 JUDGE BARRETT: One per party.

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